

FIFTH DAY

(Continued)

(Wednesday, July 29, 1959)

After Recess

The Senate met at 10:30 o'clock a.m., and was called to order by the President.

Senate Resolution 20

Senator Moffett offered the following resolution:

Whereas, We are honored today to have as visitors in the Senate Superintendent of Schools W. E. Hancock, accompanied by Mrs. Hancock and their daughter Rue Jean, all prominent citizens of Quanah, Texas; and

Whereas, We desire to welcome these distinguished guests to the Capitol Building and Capital City; now, therefore, be it

Resolved, That their presence be recognized by the Senate of Texas and that they be extended an official welcome.

The resolution was read and was adopted.

Senator Moffett by unanimous consent presented the guests to the Members of the Senate.

Senate Resolution 21

Senator Krueger offered the following resolution:

Whereas, Miss Marcella Gerchsheimer has achieved distinction for herself, her family, her school, and her home community of East Bernard, Texas, by having exhibited a keen awareness and knowledge of many of the problems peculiar to the towns and cities along the Colorado River Watershed, in recognition of which she won First Place in the Coastal Region of CRIDA and subsequently was awarded the First Place Scholarship for the whole CRIDA Area for her article, "I will Remain in East Bernard Because . . ."; and

Whereas, Miss Joan Woodall of La Grange was the winner of the First Place Scholarship in the Central Region of CRIDA for her paper, "I Would Like to Remain in La Grange, But . . .," which showed her unusual insight in the day to day problems of

young people who desire to remain in their home towns; and

Whereas, Miss Sandra Strahan of Burnet won First Place in the Upper Region of CRIDA with her paper, "I Would Like to Remain in Burnet, But . . .," thereby distinguishing herself for her awareness of the problems confronting the young people desiring to live in small towns; and

Whereas, The Senate of The State of Texas, being ever awake to the problems confronting our smaller towns and cities, and being alarmed lest a way of life pass from the American scene, finds the initiative, knowledge and enthusiasm demonstrated by these outstanding young Texans to be most heartening, encouraging, and gratifying; and

Whereas, The fact that CRIDA is a growing and dynamic organization, representing a new approach to a modern problem as well as a family approach to a family problem, instilled with a strong and burning desire to develop not only the industrial potentialities of the Colorado River watershed, but also to assist and to develop the individuals residing in this locale, makes the achievement of these young ladies even more remarkable and more commendable; and

Whereas, Misses Gerchsheimer, Strahan and Woodall have by their diligent research, deep thought, and fine work on their prize-winning essays, established themselves as present members and future leaders of the "CRIDA FAMILY"; and

Whereas, Any organization and its leaders vigorously opposed to the disrupting of family life and slow death of our smaller cities and towns which has been brought about because of young people having to leave their homes and go elsewhere in order to make a living for themselves when they reach the proper age, and, further, any such organization and its leaders devoted to the perpetuation of and progress of their communities is held in high regard and great esteem by this body; now, therefore, be it

Resolved, That the Senate of The State of Texas extend its official congratulations to Marcella Gerchsheimer, Sandra Strahan, and Joan Woodall; and be it further

Resolved, That this body go on record as urging these young ladies and the Colorado River Industrial De-

velopment Association to continue the good work now in progress; and be it further

Resolved, That this Senate go on record as being willing to assist, in any feasible way, any organization pursuing so worthy a goal; and be it further

Resolved, That copies of this Resolution be forwarded to Miss Gerchsheimer, Miss Woodall, and Miss Strahan.

**KRUEGER
CRUMP**

The resolution was read and was adopted.

Message from the House

Hall of the House of Representatives
Austin, Texas,
July 29, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

House has appointed the following Conference Committee on H. B. No. 4: Heatly, Huebner, Dewey, Latimer, Osborn.

H. B. No. 21, A bill to be entitled "An Act making an appropriation for and directing payment of certain miscellaneous claims and judgments out of the funds designated herein; requiring approval of claims in the manner specified in the Act before payment is made; and declaring an emergency."

H. B. No. 22, A bill to be entitled "An Act directing payment of certain miscellaneous claims and judgments out of the sum appropriated for that purpose in the General Appropriation Bill for the Biennium September 1, 1959—August 31, 1961; requiring approval of claims in the manner specified in the Act before payment is made; and declaring an emergency."

Respectfully submitted,

DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Committee Substitute House Bill 11 on Second Reading

The President laid before the Senate on its second reading and passage to third reading:

C. S. S. B. No. 11, a bill to be entitled "An Act revising and rearranging certain statutes of Title 122 "Taxation" of the Revised Civil Statutes of Texas and certain other laws of this State relating to taxation into a new Title to be known as Title 122A "Taxation-General" of the Revised Civil Statutes of Texas; revising statutes levying the poll tax, natural gas production tax, oil production tax, sulphur production tax, motor vehicle sales tax, cigarette tax, motor fuel (gasoline) tax, special fuels tax, utilities tax, corporation franchise tax, coin-operated machines tax, inheritance tax, additional inheritance tax, stock transfer tax, chain store tax, cement production tax, admissions tax, miscellaneous occupation taxes, and miscellaneous excise taxes; increasing or otherwise changing the rates of the motor vehicle sales tax, the cigarette tax, the utility companies tax (excepting telephone and telegraph companies) and the corporation franchise tax; reducing rate of the theater admissions tax; levying certain new and additional taxes for the support of the state government including tobacco products tax, severance beneficiary tax, hotel occupancy tax, excise taxes on boats and boat motors, air conditioners, phonographs and component parts; providing procedures for the administration and enforcement of such taxes and penalties for violations thereof; providing for the use of certain funds for tax administration and enforcement purposes; providing for the allocation of funds under this Title; amending Section 21 of Article 1, Chapter 467, Acts of the 44th Legislature, Second Called Session, 1935, as amended (compiled as Article 666-21 of Vernon's Annotated Penal Code of Texas) increasing the tax on distilled spirits and wine; specifically repealing certain enumerated statutes and acts relating to taxation and certain other laws replaced by this Act; providing for rules and regulations for administration; providing rules of construction and interpretation of this Act; providing a savings clause; providing a severability clause; providing for an effective date; and declaring an emergency."

The bill was read second time.

Senator Lane offered the following amendment to the bill:

Amend Committee Substitute for H. B. No. 11, Chapter 22, by striking out Sec. (2) of Art. 22.01 and substituting in lieu thereof the following:

"(2) The market value of gas subject to the tax hereby levied shall be the value thereof at the mouth of the well except in cases where liquid hydrocarbons are extracted or recovered therefrom in this State, in which event the market value shall be the value of the residue gas remaining after such extraction or removal, and no additional tax on liquid hydrocarbons extracted or recovered from gas is levied by this Chapter."

The amendment was adopted.

Senator Lane offered the following amendment to the bill:

Amend Committee Substitute for House Bill 11, Chapter 22, by striking out Article 22.08 and substituting in lieu thereof the following:

"Art. 22.08. The tax hereinabove imposed shall never be the liability or the obligation of the producer, except in those cases where the producer is the severance beneficiary as herein defined."

The amendment was read.

(Senator Aikin in the Chair.)

Question on adoption of the amendment, yeas and nays were demanded.

(President in the Chair.)

The amendment was adopted by the following vote:

Yeas—26

Aikin	Lane
Baker	Moffett
Bradshaw	Moore
Colson	Owen
Crump	Parkhouse
Fly	Phillips
Fuller	Ratliff
Gonzalez	Reagan
Hardeman	Roberts
Herring	Secrest
Hudson	Weinert
Kazen	Willis
Krueger	Wood

Nays—5

Dies	Rogers
Hazlewood	Smith
Martin	

Senator Lane offered the following amendment to the bill:

Amend C. S. for H. B. No. 11, Chapter 22, by striking out Art. 22.09 and substituting in lieu thereof the following:

"Art. 22.09. The provisions of this Chapter are hereby declared to be nonseverable; and if this Chapter is declared invalid by a final judgment of a court of competent jurisdiction as to any severance beneficiary, it shall be invalid from the beginning as to the producer and all other severance beneficiaries. The provisions of this section shall prevail over the provisions of the general severability clause in Section 5 of this Act as to this Chapter."

The amendment was read.

Senator Roberts offered the following substitute for the amendment by Senator Lane:

Amend C. S. for H. B. No. 11, Ch. 22, by striking out Art 22.09 and substituting in lieu thereof the following:

"In the event the tax levied in this Chapter is declared unconstitutional or invalid by a court of competent jurisdiction as to gas produced or obtained for interstate transmission the tax shall not be levied as to gas produced or obtained for intrastate consumption."

The substitute for the amendment was read.

On motion of Senator Lane the substitute amendment by Senator Roberts was tabled.

Senator Gonzalez offered the following amendment to the amendment by Senator Lane:

Amend the pending amendment to Art. 22.09 by deleting the words:

"The provisions of this Chapter are hereby declared to be nonseverable and . . ."

The amendment to the amendment was read.

On motion of Senator Lane the amendment to the amendment was tabled.

Record of Vote

Senator Krueger asked to be re-

corded as voting "Nay" on the motion to table the above amendment.

Question recurring on the amendment by Senator Lane, the amendment was adopted.

Record of Votes

Senators Herring, Martin, Krueger, Ratliff and Willis asked to be recorded as voting "Nay" on the adoption of the above amendment by Senator Lane.

Senator Lane offered the following amendment to the bill:

Amend Committee Substitute for H. B. No. 11, Chapter 8, by adding a new Article to be numbered Article 8.31 and to read as follows:

"Art. 8.31. The permit and bond required under Sections 7 and 8 of this Chapter shall not be required from any retailer, as that term is defined herein, who pays a store tax to this State, and who certifies to the Comptroller at the time this Act becomes effective and at each time such retailer pays a store tax that he sells items taxed under this Chapter."

The amendment was read and was adopted.

Senator Lane offered the following amendment to the bill:

Amend Chapter 20, Article 20.01, Subsection (i) by striking out said Subsection and substituting in lieu thereof the following:

"(i) 'Air Conditioner' shall mean any self-contained unit, apparatus or device commonly known, sold and used as an air conditioner and shall include any instrument, apparatus, or mechanical contrivance designed, constructed, or assembled as part of any such self-contained unit, apparatus or device to cool or assist in the cooling of air in any manner. The term 'air conditioner' shall also include all sub-assemblies, devices or instruments commonly used in conjunction with any such other apparatus, device, sub-assembly or instrument, which when combined or connected as a functioning self-contained unit, apparatus or device will constitute an air conditioner. The term air conditioner, however, shall not include a buzz fan or any other apparatus, device or system designed and used only to circulate or move

air, except when the same is a functioning part of a larger unit defined herein as an air conditioner."

The amendment was read and was adopted.

Record of Votes

Senators Baker and Crump asked to be recorded as voting "Nay" on the adoption of the above amendment.

Senator Roberts offered the following amendment to the bill:

Amend Committee Substitute for H. B. No. 11 by adding the following after paragraph 2 of Chapter 22:

"In the event that the market value of gas subject to the tax herein levied shall be less than Ten Cents (10¢) per each One Thousand (1,000) cubic feet in the case of any severance beneficiary, then in such event the rate of tax levied on such gas shall be one and one-half (1½) mills per each One Thousand (1,000) cubic feet. The gas subject to the tax hereby levied on such basis shall be measured at the mouth of the well, but the volume shall be adjusted to account for and subtract any shrinkage resulting from the removal or extraction of liquid hydrocarbons, water or impurities. No additional tax on such liquid hydrocarbons extracted or recovered from gas is levied by this Article."

The amendment was read.

Senator Lane moved to table the amendment.

Question on the motion to table yeas and nays were demanded.

The motion to table prevailed by the following vote:

Yeas—19

Baker	Moore
Bradshaw	Parkhouse
Crump	Phillips
Fly	Ratliff
Fuller	Reagan
Hardeman	Rogers
Hazlewood	Smith
Kazen	Weinert
Lane	Wood
Moffett	

Nays—12

Aikin	Gonzalez
Colson	Herring
Dies	Hudson

Krueger
Martin
Owen

Roberts
Secrest
Willis

Question—Shall C. S. H. B. No. 11 be passed to third reading?

Recess

On motion of Senator Hardeman the Senate at 12:01 o'clock p.m. took recess until 2:00 o'clock p.m. today.

After Recess

The President called the Senate to order at 2:00 o'clock p.m. today.

House Bills on First Reading

The following bills received from the House were read the first time and referred to the committees indicated:

H. B. No. 21—To the Committee on Claims.

H. B. No. 22—To the Committee on Claims.

Message from the Governor

The following message received from the Governor today was read and was referred to the Committee on Nominations:

Austin, Texas,
July 29, 1959.

To the Senate of the Fifty-sixth Legislature, Third Called Session:

I ask the advice, consent and confirmation of the Senate with respect to the following appointment:

To be a Member of the Board of Managers of the Texas State Railroad, for a six-year term to expire April 8, 1965: William Richards of Athens, Henderson County.

Respectfully submitted,

PRICE DANIEL,
Governor of Texas.

Senate Bill 11 on First Reading

By unanimous consent the following local bill was introduced, read first time and referred to the committee indicated:

By Senator Fly:

S. B. No. 11, A bill to be entitled "An Act amending Chapter 186, Acts 50th Legislature, Regular Session, 1947, as amended by Chapter 383,

Acts 53rd Legislature, Regular Session, 1953, and Chapter 313, Acts 54th Legislature, Regular Session, 1955 (codified as Article 8280-131 in Vernon's Texas Civil Statutes, as amended), relating to Jackson County Flood Control District; validating said District and all acts and governmental proceedings of its governing board and of other officials of the State and of Jackson County; finding and declaring that all property within said District and within the State is benefited by said District and its improvements and facilities; providing a severability clause; and declaring an emergency."

To the Committee on Water and Conservation.

Message from the House

Hall of the House of Representatives
Austin, Texas,
July 29, 1959.

Hon. Ben Ramsey, President of the Senate:

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. C. R. No. 8, Congratulating the Beaumont Chamber of Commerce and other organizations relative to the new National Guard Armory.

Respectfully submitted,

DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Committee Substitute House Bill 11 on Second Reading

The Senate resumed the consideration of the pending business, same being C. S. H. B. No. 11 on its second reading and passage to third reading.

Question—Shall C. S. H. B. No. 11 be passed to third reading?

Senator Willis offered the following amendment to the bill:

Amend Committee Substitute for House Bill No. 11 by adding thereto a new Article, to be appropriately numbered and to read as follows:

"Article —

Section 1. Section 23 of Article II, of the Texas Liquor Control Act, as last amended by Section 1 of Article III of Chapter 404, Acts of the Fifty-fourth Legislature, Regular Session, 1955, compiled as Article 667-23 of Vernon's Penal Code of Texas, is

hereby amended so as to read hereafter as follows:

"Section 23.

(a) There is hereby levied and assessed a tax at the rate of Seven Dollars and Sixty Cents (\$7.60) per barrel on the first sale of all beer manufactured in Texas and on the importation of all beer imported into this State.

The amendment was read and failed of adoption.

Record of Votes

Senators Aikin, Roberts and Rogers asked to be recorded as voting "Yea" on the adoption of the above amendment.

Senator Moore offered the following amendment to the bill:

Amend the Committee Substitute for House Bill No. 11 by striking out all of Chapter 12 and inserting in lieu thereof the following:

"CHAPTER 12

Article 12.01. Definitions. The provisions of Articles 10, 11, 12, 14, 22 and 23, Revised Civil Statutes of 1925 and of Acts 50th Legislature, 1947, Chapter 359, on the interpretation of statutes shall apply to this Article. In addition, in this Chapter, unless the context clearly indicates a different meaning:

a. "Taxpayer" means any corporation liable for a tax under this Article.

b. "Corporation" includes a corporation having a capital stock, a joint stock association or limited partnership, whether organized under the laws of this State, the United States, or any other state, territory or foreign country or dependence, and carrying on activities in this State, or owning property in this State by or in the name of itself or of any person, partnership, association, or corporation.

c. "Individual." Whenever used in any clause prescribing and imposing a fine or imprisonment or both, the term individual as applied to associations means the partners or members thereof, and, as applied to corporations, the officers thereof.

d. "Taxable year" means the calendar year unless the taxpayer is authorized by the Comptroller to use

some other twelve month period as its fiscal year in which case it means that twelve month period.

e. "Taxable income" means the taxable income for the taxable year as returned to and ascertained by the Federal Government. In the case of a corporation participating in the filing of consolidated returns to the Federal Government, "taxable income" means the taxable income which would have been return to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years. "Taxable income" is, however, subject to any correction thereof for fraud, evasion or error, as finally ascertained by the Federal Government. Additional deductions shall be allowed from taxable income on account of any dividends received from any other corporation but only to the extent that these dividends are included in taxable income as returned to and ascertained by the Federal Government and for all income from obligations of the Federal Government. No deduction shall be allowed for any Federal or State income or excess profits taxes whatsoever.

f. "Sources within this State" includes tangible or intangible property located or having a situs in this State, and any activities carried on in this State, regardless of whether carried on in intrastate, interstate, or foreign commerce.

g. "Comptroller" means Comptroller of Public Accounts.

Art. 12.02. Assessment and Purpose. There is hereby assessed and levied for the use of the State Government a tax upon the taxable income derived from sources within the State as ascertained by and returned to the Federal Government for the year one-thousand nine hundred and fifty-nine and each year thereafter collectible in the years one-thousand nine hundred and sixty and annually thereafter:

a. of every domestic corporation or association.

b. of every foreign corporation or association having a business or agency or engaged in the transaction of business in, into or from this state, or deriving any income from any sources within this state, in proportion to the taxable income of such business or agency as hereinafter provided.

Art. 12.03. Rates.

The tax assessed by this Chapter is hereby imposed on corporations at the rate of three per centum (3%) of the entire taxable income of any taxable year.

Art. 12.04. Administration of Tax.

a. The Comptroller of Public Accounts is hereby charged with the enforcement of the provisions of this Chapter, and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations not inconsistent with this act relating to any matter or thing pertaining to the administration and enforcement of the provisions of this act, and the collection of taxes, penalties and interest imposed by this Chapter. The Comptroller is required to have these rules and regulations printed and to distribute them to any taxpayer upon request.

b. The Comptroller, or any agent authorized in writing by him, is hereby authorized to examine the books, papers and records, and to investigate the character of the business of any taxpayer, in order to verify the accuracy of any return made, or if no return was made by the taxpayer, to ascertain and settle the tax imposed by this Chapter. Every taxpayer is directed and required to give to the Comptroller or his duly authorized agent, the means, facilities and opportunity for such examinations and investigations as are hereby authorized. Any information gained as a result of any reports, investigations or verifications required to be made by this act shall be confidential, except for legal purposes, and any person divulging such information is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred (100) dollars, or to undergo imprisonment for not more than six (6) months, or both.

c. The powers conferred by this Chapter upon the Comptroller relating to the administration or enforcement of this Chapter shall be in addition to, but not exclusive of, any powers heretofore or hereafter conferred upon the Comptroller by law.

d. Except in accordance with proper judicial order or as otherwise provided by law, the Comptroller or any agent, clerk, or other officer or employee may not divulge or make known in any manner the amount of income or any particulars set forth or dis-

closed in any return under this Chapter.

Nothing herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which in the opinion of the Comptroller may assist in the collection of the delinquent taxes; or the inspection by the Attorney General or other legal representatives of the State or any return of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted in accordance with the provisions of this Chapter.

Art. 12.05. Allocation of Income-Corporations.

In the case of corporations owning property or carrying on activities within and without this State, other than corporations carrying on activities as insurance or surety companies, the taxable income of such corporations derived from sources within this State for the taxable year shall be determined by allocations and apportionments of taxable income made as follows:

a. Gains realized and losses sustained from the sale or exchange of capital assets, if these assets consist of real estate or tangible personal property situated in the State, shall be allocated to this State.

b. Gains realized and losses sustained from the sale or exchange of capital assets, if these assets consist of real estate or tangible personal property situated outside of the state, shall not be allocated in any part to this State.

c. The resultant taxable income, if any, after allocations, shall be divided into three equal parts:

(1) Of one-third, such portion shall be attributed to this State or shall be found by multiplying this one-third by a fraction whose numerator is the value of the corporation's tangible property situated within this State and whose denominator is the value of all the corporation's tangible property wherever situated;

(2) Of one-third, such portion shall be attributed to this State as shall be

found by multiplying this one-third by a fraction whose numerator is the expenditures of the corporation for wages, salaries, commissions and other compensations to its employees, and assignable to this State, as hereinafter provided, and whose denominator is the total expenditures of the corporation for wages, salaries, commissions and other compensation to all its employees;

(3) Of the remaining one-third, such portion shall be attributed to this State as shall be found by multiplying this one-third by a fraction whose numerator is the amount of the taxpayer's gross receipts from property and activities assignable to this State, as hereinafter provided, and whose denominator is the amount of the taxpayer's gross receipts from all its property and activities.

In cases where the corporation does not have the property, activity or expenditure within this State so that only two of the foregoing three rules can be made applicable, the taxable income of the corporation shall be divided into two equal parts only, each of which shall be allocated in accordance with one of the remaining two rules. If only one of the three rules can be made applicable, the part of the taxable income received from property and activities carried on within this State shall be determined solely by that rule.

The amount assignable to this State of expenditures of the corporation for wages, salaries, commissions or other compensation to its employees shall be such expenditures of the taxable year as represent the wages, salaries, commissions or other compensation of employees to the extent of services rendered or work performed in the State, and similar expenditures to employees not chiefly situated at, connected with, or sent out from, premises for the transaction of business maintained by the corporation outside the State.

The amount of the corporation's gross receipts from property and activities assignable to this State shall be: (1) the amount of its gross receipts for the taxable year from services rendered, work and contracts performed, and sales made, in the State, and all other gross receipts except those negotiated or effected in behalf of the corporation by agents or agencies situated at, connected with, or sent out from premises for the transaction of business maintained by the

corporation outside of the State, and except rentals and royalties and interest and dividends; (2) rentals or royalties from property situated, or from the use of patents within this State; and (3) dividends and interest, except such dividends and interest attributable to the business conducted on premises maintained by the taxpayer outside the State.

Art. 12.06. Allocation of Income—Insurance and Surety Companies.

In the case of corporations carrying on activities as insurance or surety companies within and without this State, the taxable income from such corporations derived from sources within this State for the taxable year shall be determined by multiplying taxable income by a fraction of which the numerator is the gross premiums received from activities carried on within this State, and of which the denominator is the amount of the gross premiums received from all its activities everywhere.

a. "Gross Premiums" means the amount of dues, fees, and premiums stated in the policy contracts, and includes gross premiums of every character and description received during the taxable year from all underwriting activities, whether the premiums were received in money or in the form of notes, credits or any other substitute for money, less the following deductions:

(1) All premiums returned on policies cancelled or not taken.

(2) In the case of stock companies with participating features, an additional deduction for that portion of the premium returned to the policyholders.

(3) In the case of life insurance companies, an additional deduction for dividends declared and actually used by policyholders in payment of renewal premiums.

b. "Gross premiums received from activities carried on in this State" means gross premiums received from policies and annuities written on property or risks located or resident in this State, whether the premiums were collected in this State or elsewhere.

Art. 12.07. Blank Forms for Returns.

Blank forms of returns shall be prepared and furnished by the Comptroller. The Comptroller shall, before the 15th day of January in each and every year mail a blank form to each

and every taxpayer who or which from any record or information available to the Comptroller may be required to furnish an income tax return, and it shall deliver into the hands of the county assessor of each and every county in this State a sufficient supply of the same to be delivered upon application to such taxpayers as may apply for the same.

Failure upon the part of any taxpayer to receive a blank form from the Comptroller shall not relieve him or it from any obligation to make and file such return or from any penalty on account thereof.

Income returns shall, so far as may be, set forth the same or similar items as called for in the blank forms of returns prescribed by the United States Commissioner of Internal Revenue for the enforcement of the Act of Congress known as the "Revenue Act," together with such other facts as may be necessary for the proper enforcement of this chapter.

Art. 12.08. Returns and Payments.

a. All returns shall be made and filed with the Comptroller on or before the 15th day of April in each year. In addition to the completed return form provided by the state, the taxpayer shall also submit:

(1) A true copy of the taxpayer's return to the Federal Government of the annual taxable income arising or accruing in the taxable year, or such part or portion of said return as the Comptroller may designate:

(2) If no return was filed with the Federal Government, then the taxpayer shall submit a report to the Comptroller which shall show such information as would have been contained in a return to the Federal Government had one been made; and,

(3) Such other information as the Comptroller may require.

b. The failure of any taxpayer liable to pay tax under this chapter to procure or receive any return form shall not excuse it from making a return.

c. Every taxpayer, upon the date its return is required herein to be made, shall pay to the Comptroller not less than one-half ($\frac{1}{2}$) of the tax due to the State by it for the year, and the remaining one-half ($\frac{1}{2}$) of the tax shall be paid within the ninety (90) days next succeeding.

(d) The amount of all taxes imposed under the provisions of this Chapter not paid on or before the

times as above provided shall bear interest at the rate of six per cent (6%) per annum from the date they are due and payable until paid, except that if the taxable income has been or is increased by the Commissioner of Internal Revenue or by any other agency or court of the United States, interest shall be computed on the additional tax due from thirty (30) days after the taxpayer receives notice of the change of income until paid.

(e) If any individual, member of an association or officer of a corporation neglects or refuses to make any return or report required under this Chapter, or knowingly makes any false report or return, the Comptroller shall add an additional ten per cent (10%) of the amount of the tax to the tax determined to be due.

(f) If a taxpayer closes its fiscal year not upon the thirty-first day of December but upon some other date and makes a return to the Federal Government as of that other date or would so return if it were to make a return to the Federal Government, the taxpayer shall certify this fact to the Comptroller, and shall make the annual return herein required within thirty (30) days after its return to the Federal Government is due or would be due were it to be required of such taxpayer, subject, in all other respects to the provisions of this Chapter.

(g) If the taxpayer claims that the return made to the Federal Government was inaccurate, the amount claimed by it to be taxable income under this Chapter and the basis of such claim of inaccuracy shall be fully specified.

Art. 12.09. Retention of Records by Taxpayers; Penalty.

Each taxpayer shall maintain and keep for a period of three (3) years after any return is filed under this Chapter, such record or records of its business and taxable income arising or accruing within this State for the period covered by such return and other pertinent papers as may be required by the Comptroller.

Any individual violating any of the provisions of this Article is guilty of a misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not exceeding One Thousand Dollars (\$1,000), or to undergo imprisonment for not more than six (6) months, or both.

Art. 12.10. Consolidated Returns. The Comptroller shall not permit any corporation owning or controlling, directly or indirectly, any of the voting capital stock of another corporation or of other corporations subject to the provisions of this Chapter to make a consolidated return showing the combined taxable income.

Art. 12.11. Extension of Time to File Returns. The Comptroller may, upon application made to him in such form as he shall prescribe on or prior to the last day for filing any annual return and upon proper cause shown, grant to the taxpayer required to file such return an extension of not more than sixty days within which the return may be filed, and in case the Federal income tax authorities at any time grant a longer extension of time for filing such returns with the Federal Government, the Comptroller may grant an additional extension of time for filing the annual return under this Chapter of not more than thirty (30) days after the termination of the Federal extension. However, the amount of tax due shall, in these cases, nevertheless be subject to interest from the due dates and at the rates fixed by this Chapter.

Art. 12.12. Examination of Returns. Federal income tax returns of any taxpayer insofar as they relate to taxable income under this Chapter, may be examined in accordance with the statutes of the United States for such case made and provided and in accordance with the proclamation of the President and the regulations of the Commissioner of Internal Revenue promulgated thereunder. Returns made to other states may likewise be examined when allowed.

The income tax returns made to this State shall be made available for inspection, upon application to the Comptroller and in his discretion, to proper tax officials of any state or territory of the United States or of the Federal Government whose duties require them to make such inspection.

Art. 12.13. Lien of Taxes. All taxes imposed by this Chapter, together with all penalties and interest, shall be considered a public account, after being assessed in the manner prescribed in this Chapter, and as such shall be a lien upon the franchises and property both real and personal of the taxpayer against whom the same are assessed, after the same has been entered and docketed of record by the tax assessor of the county where the

resident's franchises or property are situated.

The Comptroller may at any time transmit to the tax assessors of the respective counties of the State, to be by them entered of record, certified copies of all liens for taxes imposed by this Chapter, and penalties and interest, upon which record it shall be lawful for a court of competent jurisdiction in a suit properly brought to enter judgment for the State against the taxpayer for the amount shown by the record plus subsequently accrued penalties and interest.

Art. 12.14. Changes Made by Federal Government.

a. If the amount of the taxable income returned by any taxpayer to the Federal Government is finally changed or corrected by the Commissioner of Internal Revenue or by any other agency or court of the United States, the taxpayer, within thirty (30) days after the receipt of such final change or correction, shall make a corrected return, under oath or affirmation to the Comptroller, showing such finally changed or corrected taxable income, upon which the tax is required to be paid to the United States. In case a taxpayer fails to file a return of a correction which results in an increase in taxable income within the time prescribed, there shall be added to the tax a penalty of Five Dollars (\$5) for every day during which the taxpayer is in default.

b. If as a result of such final change or correction, there is any change made in the amount of the taxable income of any taxpayer upon which tax is imposed by this Chapter, the Comptroller shall resettle the taxes. Whenever a resettlement is made hereunder, the Comptroller shall resettle the account according to law.

c. Where a return of change, correction or redetermination of Federal income or Federal tax has been filed after a petition for resettlement or petition for review has been taken, the return shall be deemed a part of the original annual return, upon petition of the taxpayer at any subsequent proceedings, as though it has been filed with the original return, and no separate petition for resettlement or for review from the resettlement resulting from such return of change, correction or redetermination is necessary.

Art. 12.15. Settlement and Resettlement.

a. All taxes due under this Chap-

ter shall be settled by the Comptroller. The Comptroller shall, so far as possible, complete the settlement so that notice thereof may reach the taxpayer before the end of the year after the tax return was required to be made.

b. Promptly after the date of the settlement, the Comptroller shall send, by mail or otherwise, a notice of settlement to the taxpayer.

c. If any taxpayer neglects or refuses to make any return and payment of tax required by this Chapter, the Comptroller shall estimate the tax due by the taxpayer and, settle the amount due for taxes, penalties and interest thereon, from which settlement there shall be no right of review or appeal, but the Comptroller, may require a return to be filed, and thereupon make a settlement based upon such return and cancel the estimated settlement.

d. If within one (1) year after the date of the notice of settlement, the taxpayer is not satisfied with the settlement, the taxpayer may petition the Comptroller for resettlement. Within sixty (60) days after receipt of the petition for resettlement, the Comptroller shall set the petition for hearing within a reasonable time.

e. If within two (2) years after the date of the notice of settlement, the Comptroller is not satisfied with the settlement, the Comptroller may order that a hearing for resettlement be held. The Comptroller shall give the taxpayer at least sixty (60) days written notice of the hearing for resettlement.

f. In the hearing upon the petition for resettlement or upon the Comptroller's order for a hearing for resettlement, the Comptroller shall receive any oral or documentary evidence, if it is of the quality upon which responsible persons are accustomed to rely in the conduct of serious affairs; however, he may exclude irrelevant, immaterial and unduly repetitious evidence. The taxpayer and the Comptroller may cross-examine any witness on any relevant matter.

g. After the hearing, the Comptroller shall enter a written order disposing of the resettlement. In making this order, the Comptroller shall take into account the information presented in the hearing and any other information within his possession.

Art. 12.16. Judicial Review.

A taxpayer who is adversely af-

fected or aggrieved by an order of the Comptroller made upon a petition for resettlement or upon a hearing for resettlement may obtain judicial review by filing a petition for review with the district court in Travis County within ninety (90) days from the date of the Comptroller's order.

Art. 12.17. Refunds and Credits.

Where the Comptroller finds upon settlement or upon resettlement that the taxes the taxpayer has paid exceed the taxes due by the taxpayer the Comptroller shall either give the taxpayer a credit for the excess or shall refund the excess tax paid, at the option of the taxpayer.

Art. 12.18. Tax a Debt.

Every tax imposed by this Chapter, and all increase, interest and penalties thereon, shall become from the time it is due and payable, a personal debt from the taxpayer liable to pay the same to the State of Texas.

Art. 12.19. Penalties.

a. Any individual who wilfully makes a false and fraudulent return of taxable income made taxable by this Chapter shall be guilty of wilful and corrupt perjury and, upon conviction thereof, shall be subject to punishment as provided by law. This penalty shall be in addition to any other penalties imposed by this Chapter.

b. Any individual who wilfully fails, neglects or refuses to make a return or to pay the tax as herein prescribed, or who shall refuse to permit the Comptroller to examine the books, papers and records of any taxpayer liable to pay tax under this Chapter, is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding One Thousand Dollars (\$1,000), or undergo imprisonment not exceeding six (6) months, or both. This is in addition to any other penalties imposed by this Chapter.

Art. 12.20. Enforcement Fund.

One per cent (1%) of the gross amount of taxes collected under this Chapter shall be paid into the Income Tax Administration Fund to be appropriated to the use of the Comptroller for the enforcement of this Chapter.

Art. 12.21. Allocation of Revenues.

The net revenues received by the State from the taxes imposed by this Chapter shall be placed in the Omnibus Tax Clearance Fund.

Art. 12.22. Every domestic and for-

eign corporation heretofore or hereafter chartered or authorized to do business in Texas, shall on or before each yearly anniversary of the issuance of its charter or certificate of authority to do business in Texas by the Secretary of State pay to the said Secretary of State a fee of Twenty-five Dollars (\$25) for the expense of operating the charter division. This fee shall be in addition to all other fees or taxes heretofore or hereafter paid by any such corporation and shall be deposited by the Secretary of State to the credit of the General Revenue Fund."

The amendment was read and failed of adoption.

Senator Crump offered the following amendment to the bill:

Amend Committee Substitute for House Bill No. 11 by deleting the provisions of Section I, Chapter 23 and renumbering the succeeding Sections accordingly.

**CRUMP
OWEN**

The amendment was read.

Senator Lane moved to table the amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table was lost by the following vote:

Yeas—15

Aikin	Moffett
Bradshaw	Moore
Colson	Reagan
Dies	Roberts
Fly	Rogers
Hardeman	Smith
Lane	Weinert
Martin	

Nays—16

Baker	Krueger
Crump	Owen
Fuller	Parkhouse
Gonzalez	Phillips
Hazlewood	Ratliff
Herring	Secrest
Hudson	Willis
Kazen	Wood

Senator Willis offered the following substitute for the amendment by Senator Crump:

Amend Section 1, Chapter 23 of Committee Substitute for H. B. No. 11 by deleting the words and figures Three (3%) and inserting in lieu thereof the words and figures "Two (2%)."

The amendment was read.

Senator Lane raised the point of order that the substitute amendment by Senator Willis was not a proper substitute for the pending amendment by Senator Crump.

The President overruled the point of order.

Question on adoption of the substitute by Senator Willis for the amendment by Senator Crump, the substitute failed of adoption.

Question recurring on the amendment by Senator Crump, yeas and nays were demanded.

The amendment failed of adoption by the following vote:

Yeas—14

Baker	Owen
Crump	Parkhouse
Fuller	Phillips
Gonzalez	Ratliff
Hudson	Secrest
Kazen	Willis
Krueger	Wood

Nays—17

Aikin	Martin
Bradshaw	Moffett
Colson	Moore
Dies	Reagan
Fly	Roberts
Hardeman	Rogers
Hazlewood	Smith
Herring	Weinert
Lane	

Senator Gonzalez offered the following amendment to the bill:

Amend Committee Substitute for House Bill No. 11 by adding the following:

Chapter 22-A—Pipeline Tax.

Section 1. Upon each person operating a pipe line in or through this state or engaged in transporting in or through this state crude oil, liquid petroleum products, and natural or artificial gas through pipes or conduits, for the privilege of exercising or enjoying such right and power in

this state, and for the privilege of enjoying and receiving the benefit and protection of the government and laws of this state, there is levied a tax, in addition to all other taxes, as follows:

On each mile of pipe having a diameter of less than twelve (12) inches	\$ 15.00
On each mile of pipe having a diameter of twelve (12) inches and less than fifteen (15) inches	37.50
On each mile of pipe having a diameter of fifteen (15) inches and less than twenty (20) inches	52.50
On each mile of pipe having a diameter of twenty (20) to twenty-six (26) inches, inclusive	75.00
On each mile of pipe having a diameter of over twenty-six (26) inches	125.00

The term "pipe line" as used in this section shall apply to both interstate and intrastate trunk lines, but shall not apply to those pipe lines, known as service lines, used solely for distributing gas or other petroleum products in or near cities, towns, and villages to the ultimate consumer. And this section shall not apply to those persons, firms or corporations mining or producing gas or oil on which a privilege tax measured by gross production is imposed and paid in this state.

If any part, section, subsection, sentence, clause or phase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 2. Each person required by the foregoing section to pay a privilege tax for doing business in this state, shall annually, on or before the first day of June in each year, under oath, make and file with the State Comptroller an application upon blanks prescribed and furnished by and in such form as the State Comptroller may prescribe, which shall contain:

1. The name of the company.
2. The nature of the company, whether a person or persons, or association or corporation, and under the laws of which state or county organized.
3. The location of its principal office.

4. The name and post office address of the president, secretary, auditor, treasurer, and superintendent, or general manager.

5. The name and post office address of the chief officer or managing agent of the company in this state.

6. The entire gross earnings, including all sums earned or charged, whether actually received or not, for the next preceding calendar year or fiscal year from every source derived, and business done within this state; and the total gross earnings of such persons, firms, or corporations for such period.

7. The total number of miles of gas mains or pipe lines, and the diameter of same, specifying the number of miles of each diameter of pipe; but each person shall be required to furnish in his application only the information pertaining to his operation; and such other and further information as the State Comptroller may require.

Section 3. Allocation of Revenues. All the revenues derived from the taxes and fees imposed by the foregoing Section or Sections shall be deposited to the Student Activities Fund, which is hereby authorized and created in the State Treasury. Such fund shall be allocated by the Comptroller of Public Accounts to the institutions of higher learning of the State on the basis of enrollments for the Fall term immediately preceding the time when the Fund is available for allocation. Such allocations are to be made by warrants drawn on such Fund and the amounts so paid shall be used solely for the expenses of student activities. Such activities shall mean and include such services as textbook rentals, recreational activities, health and hospital services, automobile parking privileges, intramural and inter-collegiate athletics, artists and lecture series, cultural entertainment series, debating and oratorical activities, student publications, and any other student activities and services specifically authorized and approved by the appropriate governing board. Upon payment of such allocations to the institutions of higher learning by state warrant no student service or activity fees as named herein shall be collected by any such institution for a period of twelve (12) months thereafter. The total amount of such fund is hereby appropriated for the payments to be made for such

allocations for the period ending August 31, 1961."

The amendment was read.

(Senator Martin in the Chair.)

On motion of Senator Lane the amendment was tabled.

(Senator Aikin in the Chair.)

Senator Hazlewood offered the following amendment to the bill:

Amend Committee Substitute for House Bill No. 11 by striking out subsection (2) under Article 22.02 and inserting in lieu thereof the following:

"(2) 'First Purchaser' shall mean any person purchasing gas from the producer, except where gas is processed through a gasoline plant the first purchaser shall be that person who purchases the residue gas from the plant."

The amendment was read.

Senator Martin offered the following substitute for the amendment by Senator Hazlewood:

Amend Senate Committee Substitute for House Bill 11, Chapter 22 by deleting:

All of Article 22.01, paragraph five (5) on pages 152 and 153;

The words "and first purchaser" on lines four, five and ten of paragraph (6) of Article 22.01, page 153;

All of Article 22.02, paragraph two (2) (Definition of first purchaser), page 153;

The words "first purchaser or" on line one of Article 22.03(2), 154;

The words "or first purchaser" on line one of Article 22.05, page 155;

The words "first purchaser" from line one of Article 22.06; the words "or first purchaser" in lines seven and nine of Article 22.06; the words "and first purchaser" in line twelve of Article 22.06, all on page 155;

The words "or first purchaser" in lines one, six and twelve of Article 22.07(1) on page 155;

The words "or first purchaser" on line three of Article 22.07 (2);

The words "first purchaser" in line three of Article 22.07(3);

And all paragraphs shall be renumbered accordingly.

The substitute for the amendment was read.

Senator Lane moved to table the substitute by Senator Martin for the amendment by Senator Hazlewood.

Question on the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

Yeas—16

Baker	Moffett
Colson	Moore
Crump	Phillips
Dies	Reagan
Fuller	Secrest
Herring	Smith
Krueger	Weinert
Lane	Wood

Nays—15

Aikin	Martin
Bradshaw	Owen
Fly	Parkhouse
Gonzalez	Ratliff
Hardeman	Roberts
Hazlewood	Rogers
Hudson	Willis
Kazen	

Question recurring on the amendment by Senator Hazlewood to the bill, Senator Lane moved to table the amendment.

The motion to table prevailed.

Senator Hazlewood offered the following amendment to the bill:

Amend Committee Substitute for House Bill No. 11, Section 1, Chapter 22, page 152, Article 22.01 (1), third paragraph, by adding the following:

"(7) gas used in the manufacturing of carbon black."

The amendment was read.

(President in the Chair.)

Senator Lane moved to table the amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

Yeas—22

Baker	Bradshaw
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Colson	Martin
Crump	Moffett
Dies	Moore
Fly	Owen
Fuller	Phillips
Gonzalez	Ratliff
Hardeman	Reagan
Hudson	Secrest
Krueger	Smith
Lane	Weinert

Nays—9

Aikin	Roberts
Hazlewood	Rogers
Herring	Willis
Kazen	Wood
Parkhouse	

Senator Gonzalez offered the following amendment to the bill:

Amend Art. 22.09, Chapter 22, of the Committee Substitute for House Bill 11 by adding the following:

In order to assure that no producer or severance beneficiary must pay any tax hereunder if the tax is held invalid by final judgment of a court of competent jurisdiction as to any other severance beneficiary, but with respect to all other articles, provisions, clauses or phrases of this chapter the severability clause in Section 5 of this Act shall prevail.

The amendment was read.

Senator Lane raised the point of order that the amendment by Senator Gonzalez was an attempt at the same stage of the bill to amend a section of the bill which had already been amended.

The President sustained the point of order.

Senator Willis offered the following amendment to the bill:

Amend Committee Substitute for H. B. No. 11, Chapter 22, by striking out the following words and figures wherever they occur in sequence:

"One and one-half per cent (1 and ½ %)

and inserting in lieu thereof the following words and figures:

"Three per cent (3%)."

The amendment was read.

Senator Lane moved to table the amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

Yeas—22

Aikin	Lane
Baker	Martin
Bradshaw	Parkhouse
Crump	Phillips
Fly	Ratliff
Fuller	Reagan
Gonzalez	Rogers
Hardeman	Secrest
Hazlewood	Smith
Hudson	Weinert
Krueger	Wood

Nays—8

Colson	Moore
Dies	Owen
Herring	Roberts
Moffett	Willis

Absent

Kazen

Senator Gonzalez offered the following amendment to the bill:

Amend Committee Substitute for House Bill 11 by adding the following:

Art. 22.10.

In order to assure that no producer or severance beneficiary must pay any tax hereunder if the tax is held invalid by final judgment of a court of competent jurisdiction as to any other severance beneficiary, but with respect to all other articles, provisions, clauses or phrases of this chapter the severability clause in Section 5 of this act shall prevail.

The amendment was read and failed of adoption.

Senator Martin offered the following amendment to the bill:

Amend C. S. H. B. 11, Chapter 22, by striking out paragraph 3 and inserting in lieu thereof the following:

"In calculating the tax herein levied there shall be excluded:

(1) Gas injected into the earth in this State, unless sold for such purpose; (2) gas produced from oil wells with oil and lawfully vented or flared; (3) gas used for lifting oil unless sold for such purposes; (4) gas used

in connection with the irrigation of lands in Texas.

The amendment was read.

Senator Lane moved to table the amendment.

The motion to table was lost by the following vote:

Yeas—9

Fly	Parkhouse
Hardeman	Phillips
Hazlewood	Reagan
Lane	Weinert
Moore	

Nays—22

Aikin	Krueger
Baker	Martin
Bradshaw	Moffett
Colson	Owen
Crump	Ratliff
Dies	Roberts
Fuller	Rogers
Gonzalez	Secrest
Herring	Smith
Hudson	Willis
Kazen	Wood

Question recurring on the amendment by Senator Martin, the amendment was adopted.

Senator Martin offered the following amendment to the bill:

Amend Committee Substitute for House Bill 11 by striking paragraph (4) of Article 22.01 of Chapter 22, and inserting in lieu thereof the following new paragraph (4):

"(4) The tax hereby levied shall be a liability of the producer of gas, but if produced for or sold to a severance beneficiary other than the producer, the tax shall be the liability of and paid by the severance beneficiary. It is the intention of this Article that the producer shall be required to pay the tax hereby levied only if the gas is produced for his own use or independent sale and not under any prior contract to produce for sale to another. The provisions in this paragraph shall not be severable and producers shall not be liable for any tax under the provisions of this Article unless severance beneficiaries other than producers are also liable as provided under the terms hereof. If the tax hereby levied is held invalid as to any class of severance beneficiaries, other than governmental entities or organ-

izations held to be exempt from taxation, then it shall not be valid as to other severance beneficiaries or producers, and the non-severability provisions of this Section shall prevail over the general severability clause in Section 5 of this Act. It shall be the duty of each producer to keep accurate records in Texas of all gas produced and to make monthly reports under oath as hereinafter provided."

The amendment was read.

Senator Lane moved to table the amendment.

The motion to table was lost by the following vote:

Yeas—13

Baker	Moore
Colson	Phillips
Dies	Reagan
Fly	Secrest
Hardeman	Smith
Hazlewood	Weinert
Lane	

Nays—18

Aikin	Martin
Bradshaw	Moffett
Crump	Owen
Fuller	Parkhouse
Gonzalez	Ratliff
Herring	Roberts
Hudson	Rogers
Kazen	Willis
Krueger	Wood

Senator Lane raised the point of order that the pending amendment by Senator Martin was contrary to and included the same subject matter as an amendment previously adopted.

The President overruled the point of order.

Question recurring on the amendment by Senator Martin, the amendment was adopted.

Senator Fuller offered the following amendment to the bill:

Amend Committee Substitute for House Bill 11 as amended by striking out all below the enacting clause and substituting in lieu thereof the following:

**ARTICLE I
SPECIAL FUELS TAX**

Section 1. Short Title.

This Article, and any amendments

thereto, shall be known and may be cited as the "Special Fuels Tax Law."

Sec. 2. Definitions.

The following words and terms, as used in this Article, are defined as follows unless the context clearly indicates a different meaning:

(a) "Special fuels" means all combustible gases and liquids suitable for the generation of power for the propulsion of motor vehicles, including "liquefied gas" and "distillate fuel" as defined in (b) and (c) of this Section, except that the term "special fuels" shall not include "motor fuel" as defined in the Motor Fuel Tax Law by Chapter 184, Article XVII, Regular Session of the Forty-seventh Legislature, and amendments thereto.

(b) "Liquified gas" means all combustible gases which exist in the gaseous state at sixty degrees (60°) Fahrenheit and at a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute.

(c) "Distillate fuel" means diesel fuel, kerosene, and any other liquid suitable for the generation of power for the propulsion of motor vehicles, except liquefied gas as defined in (b) above and motor fuel as defined in the Motor Fuel Tax Law cited in (a) above.

(d) "Bulk" as used in connection with the sale or handling of special fuels, means a quantity of distillate fuel in excess of five (5) gallons, and any quantity of liquefied gas other than in cylinders containing one hundred (100) pounds or less.

(e) "Motor vehicle" means any automobile, truck, pickup, jeep, station wagon, bus or similar vehicle, propelled by a motor or internal combustion engine upon the public highways; provided, that any tractor, combine, or other vehicle or machine designed primarily for use off the public highways shall be deemed to be a motor vehicle when propelled or serviced with special fuels for propulsion, upon the public highways.

(f) "Supplier" means any person who delivers special fuels to dealers or users (including locations of the supplier) for redelivery by them into the fuel supply tanks of motor vehicles.

(g) "Dealer" means and includes every person who sells any special fuels at retail and delivers such spe-

cial fuels into the fuel supply tanks of motor vehicles.

(h) "User" means and includes every person who delivers any special fuels into the fuel supply tanks of motor vehicles owned or operated by him. "Users" also means any person who imports special fuels into this State in the fuel supply tanks of motor vehicles owned or operated by him.

(i) "Person" means every individual, firm, association, joint stock company, syndicate, partnership, co-partnership, corporation (public, private, or municipal), trustees, agency or receiver.

(j) "Public highway" means and includes every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, including toll roads, and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

(k) "Comptroller" means Comptroller of Public Accounts of the State of Texas.

In each case the singular of a word used in this Article shall be deemed to embrace the plural, and the plural shall embrace the singular.

Sec. 3. Levy of Tax.

(a) An excise tax is hereby levied and imposed upon the use of special fuels for the propulsion of motor vehicles upon the public highways of this State at rates of five cents (5c) per gallon of liquified gas, and six and five-tenths cents (6.5c) per gallon of distillate fuel, so used, which said tax or taxes shall be collected, reported, and paid as hereinafter provided.

(b) Provided, however, that when special fuels are used or consumed, or are to be used or consumed by a transit company (1) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers; (2) which holds a franchise from such city or town; (3) whose rates are regulated by such city or town; and (4) which pays such city or town a tax on its gross receipts, such transit company which possesses the aforementioned four (4) characteristics,

or any municipally owned and operated transit company, shall be entitled to a refund of the taxes levied herein except that the one-fourth ($\frac{1}{4}$) of the taxes levied which is allocated to the Available School Fund by the Constitution of the State of Texas shall not be refunded.

A transit company may obtain such refund by conforming to the refund procedure set forth in Section 14 of this Article and by furnishing to the Comptroller an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it has used, or will use special fuels only in the operations of its vehicles.

(c) Every supplier shall collect the tax, at the rate imposed, on each gallon of special fuels delivered to non-bonded dealers or users and shall report and pay to this State the tax so collected. Provided, however, other deliveries of special fuels may be made without collecting the tax otherwise imposed when delivery is made by the supplier into separate storage facilities maintained by dealers when such storage facilities are physically separated from motor vehicle fueling units and prominently labeled "Not for Highway Use" in plain view of the public and in letters of not less than two (2) inches in height.

(d) Every dealer shall collect the tax, at the rate imposed, on each gallon of special fuels delivered by him into the fuel supply tanks of motor vehicles and shall report and pay to this State the tax so collected, unless said tax has been paid to a licensed supplier.

(e) Every user shall report and pay to this State the tax, at the rate imposed, on each gallon of special fuels delivered by him into the fuel supply tanks of motor vehicles, unless said tax has been paid to a licensed supplier. Every user shall also report and pay the tax, at the rate imposed, on each gallon of special fuels imported into this State in the fuel supply tanks of motor vehicles owned or operated by him and consumed in the operation of such motor vehicles upon the public highways of this State. No permit shall be required and no tax shall be paid on special fuels imported in the fuel supply tanks of any motor vehicle when said fuel supply tanks, and any additional containers, have an aggregate capacity of not more than thirty (30) gallons, and if

said motor vehicle is not operated by said user for hire, or compensation, or for commercial purposes.

The delivery of special fuels into the fuel supply tanks of tractors, combines or other vehicles or machines designed primarily for non-highway travel for propelling such vehicles or machines over the public highways from one job or custom work performed for others for hire or compensation to another such job, or in hauling goods, wares, merchandise or other commodities over the public highways shall constitute and be deemed to mean the delivery of special fuels into the fuel supply tanks of motor vehicles.

(f) Every license supplier shall deduct the tax on one per cent (1%) of the taxable gallons of special fuels sold, delivered or used by him in the payment of taxes to the State of Texas, which deduction or allowance shall be apportioned among the supplier and dealers who purchase said taxable special fuels as follows: every supplier who makes a bulk sale of special fuels to a dealer, upon which sale the tax is required to be collected, shall set out the tax separately on the invoice and deduct one half of one per cent ($\frac{1}{2}$ of 1%) of the amount of such tax and the balance shall be the amount of tax the supplier is entitled to collect from such dealer; any dealer or user who is licensed to report and pay taxes directly to this State on special fuels sold or used by him shall be entitled to deduct one half of one per cent ($\frac{1}{2}$ of 1%) of the taxes paid directly to the State of Texas by him.

The above deductions or allowances shall be for evaporation and handling losses, and for the expense of collecting taxes, making reports and tax remittances, and keeping records.

(g) No city, town, county, or other political subdivision of this State, shall levy or collect any excise tax on the sale or use of special fuels.

Sec. 4. Dual Carburetion—Presumption of Use. Any person who operates a motor vehicle that is equipped to use motor fuel and special fuels interchangeably in the propulsion of said motor vehicle shall be prima facie presumed to have used taxable special fuels exclusively in the operation of said motor vehicle, unless proof of the amount of motor fuel used is maintained for the time

and in such form as the Comptroller may require by rule and regulation.

Sec. 5. Unlawful Operations of Motor Vehicles.

(a) It is unlawful to transport special fuels upon the public highways in any cargo tank from which special fuels are sold or delivered which has a connection by pipe, tube, valve, or otherwise with the carburetor or with the fuel supply tank feeding the carburetor of the motor vehicle transporting said products.

(b) It is unlawful to operate with special fuels any motor vehicle licensed for operation upon the public highways on which a speedometer is not kept at all times in good operating condition to correctly measure and register the miles traveled by such motor vehicle; and a conviction or judgment secured in any criminal or civil action by the State against any person for willful violation of or failure or refusal to comply with such provisions of law shall forfeit the right of such offender to purchase special fuels in this State without paying the tax thereon for a period of six (6) months from the date final judgment is entered. This provision shall not be construed as prohibiting such person from claiming refund of the tax paid on special fuels purchased and used off the public highways of this State.

Sec. 6. Unlawful Sales.

Except in the case of tax-paid deliveries into the fuel supply tanks of motor vehicles, it is unlawful to make bulk sales of special fuels to any person who (1) is not licensed as a supplier, or (2) is not licensed as a dealer or user of special fuels, or (3) does not furnish a signed statement that none of the special fuels purchased will be delivered by him or permitted by him to be delivered into the fuel supply tanks of motor vehicles. A taxable use of the special fuels so purchased without securing a user's permit shall, in addition to the penal provisions hereinafter prescribed, forfeit the right of said person to purchase special fuels tax-free for a period of one (1) years from the date of such offense. Except as otherwise prescribed by rule and regulation of the Comptroller, such statement shall be effective from its date of execution to the end of the calendar year, unless revoked in writing by the pur-

chaser after use of any special fuels so purchased, or after becoming licensed as a user. The furnishing of such statements shall be waived for a period of six (6) months from the effective date of this Article and not thereafter.

Sec. 7. Tax Liability on Leased Motor Vehicles.

Any user who as lessee, in furtherance of his business, enters into a lease or a contract or other arrangement with another person for the operation of a motor vehicle, the operation of which will create a liability for the tax herein imposed, shall be deemed to be the operator of said motor vehicle or vehicles and shall report and pay the tax accruing by reason of the use under such lease or contract. This provision shall not be construed as relieving any lessor or person acting as a user from the payment of the tax herein imposed in cases where the lessee is not qualified as a licensed and bonded user as required under this Article. Nothing herein shall be construed as requiring the filing of more than one report covering a given special fuel use operation or as requiring the payment of the tax herein imposed more than once on the same special fuels.

Sec. 8. Optional Computation of Tax.

In the event the tax herein imposed on special fuels imported into this State in the fuel supply tanks of motor vehicles and the tax on special fuels used in motor vehicles owned or operated by licensed suppliers or other persons acting as users can be more accurately determined on a mileage basis (that is by determining and using the total number of miles traveled and the total gallons of fuel consumed), or in case it is more practicable to so determine the tax, the Comptroller is hereby authorized to approve and adopt such basis.

Sec. 9. Applications for Permits.

Every person defined herein as a supplier or dealer or user shall secure from the Comptroller the kind and class of permit required herein to act in such capacities or to perform such functions. Applications, verified by affidavit, shall be filed with the Comptroller for any such permit on a form prescribed by the Comptroller, showing the kind and class of permit de-

sired, and such information as the Comptroller may require.

Sec. 10. Bonds.

(a) Every person who is authorized by permit or required by law to make remittances or payments directly to this State of taxes collected upon the sale or delivery of special fuels or of taxes incurred upon the use of said products shall file with his application for permit a bond in an amount to be set by the Comptroller at not less than three (3) times the amount of taxes that will accrue or may be expected to accrue during any month of the calendar year, but which bond shall never be less than One Thousand Dollars (\$1,000) if filed by a supplier nor less than Five Hundred Dollars (\$500) if filed by a dealer or user. Every such bond shall be executed by a surety company authorized to do business in this State, payable to the State of Texas, and shall remain in force from the date it is made effective to the end of the calendar year, unless released by the Comptroller as herein provided. Such bond shall be conditioned upon the full, complete, and faithful performance by the person for whom it is issued of all of the conditions and requirements imposed on said person by this Article, or by rules and regulations promulgated by the Comptroller, and shall expressly guarantee the remittance or payment to the State of Texas within the time prescribed by law of all taxes, penalties, interest, and costs required herein to be remitted or paid to this State by said person. Any such bond which is continuous in form may be continued in effect for a succeeding calendar year by a renewal certificate acceptable to the Comptroller which said renewal certificate, when and if issued, shall have all the force and effect of an original bond.

(b) If the amount of any existing bond becomes insufficient, or any surety on a bond becomes unsatisfactory or unacceptable, the Comptroller may require the filing of a new or an additional bond. The Comptroller shall also have authority to require the filing of reports and tax remittances at shorter intervals than one (1) month if, in his opinion, an existing bond has become insufficient. If any supplier, dealer, or user licensed hereunder shall fail or refuse to file a new or an additional bond within ten (10) days after demand or

shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the Comptroller, his permits shall be revoked or suspended in the manner herein provided. The filing of a new bond, or the cancellation or suspension of a permit, or recoveries on any bond, shall not invalidate an existing bond, but any surety on a bond shall be released and discharged from any and all liability accruing under such bond after the expiration of thirty (30) days from the date such surety has filed with the Comptroller at his office in Austin, Travis County, Texas, written request to be released and discharged. Such request shall not operate to release or discharge such surety from liabilities incurred prior to the expiration of said thirty-day period. The Comptroller shall, upon receipt of any such request, promptly notify the person in whose behalf such bond was filed, and unless said person shall file with the Comptroller a new bond in the amount and form herein provided within fifteen (15) days from the date of such notice, the Comptroller shall proceed to cancel the permit of said person.

(c) Any person who has filed with the Comptroller a bond as a motor fuel distributor under the terms and conditions provided in the Motor Fuel Tax Law, Chapter 184, Article XVII, Regular Session of the Forty-seventh Legislature, as amended, may extend the terms and conditions of said distributor's bond, by rider or bond form approved by the Comptroller, to include coverage of all liabilities and conditions imposed by this Article upon the supplier, or the dealer, or the user to whom said extension is made applicable. The amount of bond that may be required of a supplier, dealer or user shall not exceed the maximum amount provided by said Motor Fuel Tax Law for a motor fuel distributor's permit.

(d) Any applicant for a permit may, in lieu of filing a surety bond, deposit cash in the amount of bond required in the Suspense Account of the State Treasury, or may deposit securities of a par value equal to the amount of bond required and of a class in which funds of The University of Texas may be legally invested. Such cash or securities shall be released within sixty (60) days after cancellation or surrender of any permit held by the person in whose be-

half they were deposited when said permit holder has been cleared of all tax liability by the Comptroller. The Comptroller is hereby authorized and empowered to withdraw and use any such cash and to sell any such securities and use the proceeds therefrom to pay off and satisfy any judgment secured in any action by this State to recover special fuels taxes, costs, penalties and interest found to be due said State by any person in whose behalf such cash or such securities were deposited. Any such person may acknowledge in writing the correctness of the State's claim against him for taxes, costs, penalties and interest and may authorize the use of said cash or the proceeds from the sale of such securities to pay on or pay off the claim without having suit filed.

Sec. 11. Permits.

(a) Upon approval of an application and approval of bond, if a bond is required, the Comptroller shall issue to the applicant a permit authorizing him to engage in the kind of business or other operations or to perform the functions set out in and authorized by the class of permit so issued. The permits shall be issued for each calendar year, or any unexpired part of a year, and shall be effective from the date of issue to the end of such calendar year, unless revoked or suspended for cause, as hereinafter provided. Such permits shall be of the kinds and classifications as set out hereinbelow:

Non-Bonded Supplier Permits.

Authorizing persons to engage in business as suppliers of special fuels to Bonded Dealers and Bonded Users only.

Bonded Supplier Permits.

Authorizing persons to engage in business as suppliers of special fuels to either Bonded or Non-Bonded Dealers and Users.

Non-Bonded Dealer Permits.

Authorizing persons whose retail sales of special fuels are predominantly for delivery into the fuel supply tanks of motor vehicles, to engage in business as dealers.

Bonded Dealer Permits.

Authorizing persons whose retail sales of special fuels are not predominantly for delivery into the fuel supply tanks of motor vehicles, to engage in business as dealers.

Non-Bonded User Permits.

Authorizing persons whose purchases of special fuels are predominantly for delivery by them into the fuel supply tanks of motor vehicles owned or operated by them, to act as users.

Bonded User Permits.

Authorizing persons whose purchases of special fuels are not predominantly for delivery by them into the fuel supply tanks of motor vehicles owned or operated by them, to act as users.

Bonded User Import Permits.

Authorizing persons who import special fuels into this State in the fuel supply tanks of motor vehicles owned or operated by them, to act as users.

The Comptroller shall determine from the information shown in the application or other investigation the kind and class of permit to be issued.

The Comptroller may authorize a change in the classification of a permit holder when it will facilitate the administration of this Article.

A supplier may operate under his supplier's permit as a dealer or as a user without securing a separate permit but he shall be subject to all other conditions, requirements, and liabilities imposed by this Article upon a dealer or a user. A licensed dealer may use special fuels in motor vehicles owned or operated by him without securing a separate permit as a user, subject to all conditions, requirements, and liabilities imposed herein upon a user.

All permits shall be posted in a conspicuous place or kept available for public inspection at the principal place of business of the owner thereof. A certificate of the permit shall be issued for and kept on display at each additional place of business or other operation of the permit holder. Persons holding users' import permits shall reproduce the permit by photostat or other method for each motor vehicle operated by said permit holders and shall carry a copy of said permit with each motor vehicle while operating in Texas.

(b) The Comptroller, or any authorized representative of the Comptroller is hereby authorized to cancel or to suspend any permit issued under the terms of this Article or to

refuse the issuance, extension, or reinstatement of any permit to any person who has violated, or has failed to comply with, any rule and regulation of the Comptroller or any provision of this Article. Before any such permit may be cancelled or suspended, or the issuance, or extension, or reinstatement of any such permit may be refused, the Comptroller shall give the owner of such permit, or applicant therefor, not less than five (5) days notice of a hearing at the office of the Comptroller in Austin, Travis County, Texas, or at any district office maintained by the Comptroller's Department, granting said owner or applicant an opportunity to show cause before the Comptroller, or his authorized representative, why such action should not be taken. Such notice shall be in writing and may be mailed by certified or registered mail to said owner or applicant at his last known address or may be delivered by a representative of the Comptroller to the owner or applicant, and no other notice shall be required. The Comptroller may prescribe his own rules of procedure and evidence for such hearings.

If, after said hearing or opportunity to be heard, the permit is cancelled, as above provided, all taxes which have been collected or required to be collected upon the sale or delivery of special fuels and all taxes which have accrued upon the use of said product shall ipso facto become delinquent, and the permittee shall forthwith file a report for any period not covered by preceding reports filed by him to the date of cancellation and shall remit and pay to the State of Texas all taxes which have been collected or required to be collected and which have accrued from the sale or delivery or use of special fuels up to and including the date of cancellation. A new permit shall not be issued to any person who is delinquent in the payment of taxes, penalties or interest.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under a cancelled permit.

(c) An appeal from any order of the Comptroller, or his authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit may be taken to the District Court of Travis County,

Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller, or his authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) trial of all such cases shall commence within ten (10) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his authorized representative, may be suspended or modified by the court pending a trial on the merits.

Sec. 12. Records Required.

(a) Every supplier, dealer, or user holding a permit or required by law to secure a permit to sell, deliver, or use special fuels shall keep for a period of two (2) years open to inspection at all times by the Comptroller or Attorney General, or their authorized representatives, a complete record of all liquefied gas and all distillate fuel purchased or received and all of such products sold, delivered, or used by them showing the date of each receipt, the name and address of the person from whom purchased or received, the number of gallons of each product received at each place of business or place of storage in Texas, and showing the date of each sale or delivery, the number of gallons of each kind of products sold or delivered for taxable purposes, and the number of gallons of each product sold or delivered for the purposes not subject to the tax imposed herein, and if sold in bulk quantities the name and address of the purchaser, and showing inventories of liquefied gas and of distillate fuel on hand at each place of business at the end of each month.

(b) Each bulk sale and delivery of special fuels shall be covered by an invoice, with the name and address of the supplier or dealer and a serial number printed thereon, showing the complete information set out hereinabove for each such sale, one counterpart of which shall be delivered to the purchaser and another counterpart kept by the supplier or dealer for the period of time and purposes above provided. Each delivery of liquefied

gas or distillate fuel into the fuel supply tank of a motor vehicle shall be recorded upon a serially numbered invoice issued in not less than duplicate counterparts on which shall be printed the name and address of the supplier, dealer, or user making such delivery and on which shall be shown, in spaces to be provided on such invoice, the date of delivery, the number of gallons and kind of special fuels so delivered, the total mileage recorded on the speedometer of the motor vehicle into which delivered, and the State highway license number of said motor vehicle.

The invoice shall reflect separately the tax rate and amount of tax on each of the products delivered. One counterpart of the invoice shall be kept by the supplier, dealer, or user making such delivery as a part of his record and for the period of time and purposes hereinabove provided. Another counterpart shall be delivered to the operator of the motor vehicle and carried in the cab compartment of the motor vehicle for inspection by the Comptroller or his representatives for a period of thirty (30) days after the special fuels it covers have been consumed.

(c) Every user shall keep, in addition, to his record of deliveries into motor vehicles, a complete record of the total gallons of liquefied gas and the total gallons of distillate fuel used for other purposes during each month and the purposes for which said special fuels were used.

Sec. 13. Tax Payments—Reports.

(a) Every supplier and dealer who is required herein to collect taxes on the sale or delivery of special fuels and every user who is required to pay taxes on the delivery of special fuels into the fuel supply tanks of motor vehicles or on the use of imported special fuels shall, on or before the twenty-fifth (25th) day of each calendar month, pay to the State of Texas at the office of the Comptroller in Austin, Travis County, Texas, the amount of such taxes required to be collected and the amount required to be paid during the month next preceding, unless said taxes have been paid by a dealer or user to a licensed supplier as provided in this Article. At the time of making such tax payments every supplier, dealer, and user who is required to pay any taxes directly to this State, shall file with the

Comptroller a report of special fuels handled, in the form and manner as hereinafter provided.

(b) Every supplier shall, on or before the twenty-fifth (25th) day of each calendar month, make and file with the Comptroller upon a form prescribed by the Comptroller an itemized report, verified by affidavit, accounting for the special fuels handled during the preceding month which report shall show the quantities of liquefied gas and the quantities of distillate fuel purchased or received from sources within this State and the quantities of each product received from sources outside of this State, the quantities of each of said products sold or delivered to dealers and users upon which taxes were required to be collected, the quantities of each product sold and delivered to dealers and users without collecting said taxes, the quantities of each product sold and delivered into the fuel supply tanks of motor vehicles, the quantities of each product delivered into the fuel supply tanks of motor vehicles owned or operated by such supplier and the quantities of each product used by him for other purposes, the total quantities of each product sold or delivered to persons other than dealers, users, or operators of motor vehicles, the quantities of each product lost by fire or other accident, the quantities lost by shrinkage or evaporation, and the total quantities of each product on hand at the beginning and at the end of the month covered by such report. The report shall include a schedule of the total quantities of liquefied gas and distillate fuel sold or delivered to dealers and users without collecting taxes thereon, and the names and addresses of such dealers or users. The Comptroller may in his discretion require selective schedules from any supplier with respect to any purchases, sales or deliveries of special fuels. Every supplier shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(c) Every dealer who purchases or acquires special fuels tax-free for taxable resale or delivery of any part of said products shall, on or before the twenty-fifth (25th) day of each calendar month, make and file with the Comptroller on forms prescribed

by the Comptroller an itemized report, verified by affidavit, accounting for the special fuels handled during the preceding month which report shall show the quantities of liquefied gas and the quantities of distillate fuel purchased or received and the suppliers from whom received, the quantities of each product sold and delivered into the fuel supply tanks of motor vehicles, the quantities of each product sold and delivered for use off the public highways and the purposes for which purchased, the quantities of each product delivered into the fuel supply tanks of motor vehicles owned or operated by such dealer and the quantities of each product used by him for other purposes, the quantities of each product lost by fire or other accident, and the total gallons of each product on hand at the beginning and at the end of the month covered by such report. The Comptroller may in his discretion require schedules from any such dealer with respect to any purchases, sales or deliveries of special fuels. Every such dealer shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(d) Every user who purchases or acquires special fuels tax-free for taxable use of any part of said products shall, on or before the twenty-fifth (25th) day of each calendar month, make and file with the Comptroller upon forms prescribed by the Comptroller an itemized report, verified by affidavit, accounting for the special fuels handled during the preceding month which report shall show the quantities of liquefied gas and the quantities of distillate fuel purchased or received and the suppliers from whom received, the quantities of each product delivered into the fuel supply tanks of motor vehicles owned or operated by such user, the quantities of each product used off the public highways of this State and the purposes for which used, the quantities lost by fire or other accident or disposed of in any other manner, and the total quantities of each product on hand at the beginning and at the end of the month covered by such report. The Comptroller may in his discretion require schedules from any such user with respect to any purchases, deliveries or uses of special fuels. Every

such user shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(e) Every user who imports special fuels in the fuel supply tanks of motor vehicles operated by him on the public highways of Texas for hire or compensation or for commercial purposes shall, on or before the twenty-fifth (25th) day of each calendar month, make and file with the Comptroller on forms prescribed by the Comptroller an itemized report, verified by affidavit, accounting for all special fuels imported and all special fuels used in such motor vehicles during the preceding calendar month, which report shall show for each motor vehicle operated by said user into or from the State of Texas for such purposes, the total miles traveled in Texas and elsewhere, the total quantities of liquefied gas or distillate fuel consumed by each motor vehicle in such travel and the average miles traveled per gallon of fuel consumed, the total miles traveled in the State of Texas and the quantities of liquefied gas or distillate fuel purchased in Texas and delivered into the fuel supply tanks of each such motor vehicle, and such other information pertinent to the use of special fuels in such motor vehicles and the taxes paid or accrued thereon, as the Comptroller may require. The Comptroller may in his discretion require schedules to be submitted as a part of such report with respect to any special fuels purchased or used in connection with such operations. Every such user shall attach legal tender or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered in the report.

(f) When it shall appear that a supplier, dealer or user to whom the provisions of this Article shall apply has erroneously reported and remitted or paid more taxes than were due the State of Texas upon any special fuels during any taxpaying period, either on account of a mistake of fact or law, it shall be the duty of the Comptroller to credit the total amount of taxes due by such supplier, dealer or user for the current period with the total amount of taxes so erroneously paid, or said supplier, dealer or user may file claim for refund of the taxes

erroneously paid. Such credit shall be allowed or the tax refund claim paid before any penalties and interest shall be applicable.

Sec. 14. Refunds.

(a) Except as otherwise provided by Section 15 of this Article, any licensed dealer who shall have paid the tax imposed by this Article upon any liquefied gas or distillate fuel which has been used or sold for use by such dealer for any purpose other than propelling a motor vehicle upon the public highways of this State, or which has been sold to the United States Government for the exclusive use of said Government, and any licensed user who shall have paid said tax upon any liquefied gas or distillate fuel which has been used by such user for any purpose other than propelling a motor vehicle upon said public highways, may file claim for a refund of the tax or taxes so paid, less one per cent (1%) allowed suppliers for the expense of collecting and reporting such taxes to this State. Such claims shall be filed with the Comptroller on forms prescribed by the Comptroller and shall show the date of filing and the period covered in the claim, the gallons of liquefied gas and the gallons of distillate fuel sold or used for purposes subject to tax refund, and shall show such other facts and information as the Comptroller may by rule and regulation require. Every such claim shall be supported by an invoice or invoices issued by the claimant, as hereinafter provided, and shall be verified by affidavit of the claimant and filed in the office of the Comptroller within six (6) months from the date the special fuels were invoiced or required to be invoiced for sale or use, and no claim shall be made by the claimant or approved by the Comptroller when the sale of such special fuels or the appropriation for use occurs more than six (6) months prior to the date the claim is filed.

(b) When liquefied gas or distillate fuel is sold by a dealer or is appropriated for use by a user for any purposes for which a refund of the tax paid on said products may be claimed as provided herein, such dealer or user shall, at the time of each sale or appropriation for use and not thereafter, make out a serially numbered invoice in not less than duplicate counterparts with the name and

address of the dealer or user printed thereon which shall show the date of the sale or appropriation for use, the quantities of liquefied gas and/or distillate fuel sold or appropriated for use, the purposes for which said products will be used, as declared by the purchaser or user, and such other information as the Comptroller may require. The invoice shall be signed by the recipient of any such special fuels purchased from a dealer. One counterpart of each invoice shall be kept by the dealer or user for a period of two (2) years open to the inspection of the Comptroller or his authorized representatives, and the other counterpart shall be filed as a part of the claim for tax refund as above provided.

(c) Any dealer or user who shall file claim for refund of the tax on any special fuels which have been delivered into the fuel supply tank of a motor vehicle, or who shall file any invoice in a claim for tax refund upon which any date, figure, signature, or other material information is false or incorrect, shall forfeit his right to the entire amount of the refund claim filed.

(d) If upon examination or investigation the Comptroller finds that the claim is just and that the taxes claimed have been paid by the claimant he shall issue warrant to the claimant in the amount due but no greater amount shall be refunded than has been paid into the State Treasury on any special fuels.

(e) All the moneys paid into the Treasury under the provisions of this Article, except the filing fees provided herein, shall be set aside in the special fund known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until a report is made by the Comptroller to the Treasurer, showing the total maximum amount of refunds that may be required to be paid by the State out of said funds. The Comptroller shall on the twentieth (20th) day of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on the sale of special fuels during the preceding month, upon which a refund may be due, and shall certify to the State Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to

pay refunds and shall not distribute that part of said fund until the expiration of the time in which a refund can be made out of said fund, but as soon as said report has been made by the Comptroller and the maximum amount of refunds determined, he shall deduct said maximum amount from the total taxes paid for such month, and apply the remainder of such as provided by law. If the claimant loses, or for any reason fails to receive warrant after it has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue claimant duplicate warrant as provided in Article 4365, Revised Civil Statutes of Texas.

So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds provided for herein. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the one per cent (1%) deducted originally by the supplier upon the sale or delivery of the special fuels shall be deducted in computing the refund. The Comptroller shall deduct fifty cents (50c) from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement of this Article, and for the payment of expenses in furnishing the claim forms and other forms provided for herein, and the same is hereby appropriated for such purposes. All such filing fees shall be paid out on vouchers and warrants in such manner as may be prescribed by law.

Sec. 15. Exceptions to Tax Refunds.

(a) No tax refunds shall be paid to any person on special fuels used in any construction, maintenance or repair work on or in connection with the public highways of this State when and if such work is paid for from any State funds to which special fuels tax collections are allocated or is paid jointly from any such State funds and Federal funds.

(b) The delivery of special fuels into the fuel supply tanks of any tractor, truck-tractor, vehicle, or machine of any kind or description for use (1) in hauling materials, supplies or products over the public highways to or from, or in connection with, any highway construction, maintenance or

repaid work or (2) for use in mowing the right of way of the public highways, when such work is paid for from State funds or State and Federal funds as above provided, shall constitute and be deemed to mean the delivery of special fuels into the fuel supply tanks of motor vehicles for taxable use.

Sec. 16. Prima Facie Presumptions.

(a) Any supplier, dealer or user who shall fail to keep the records, issue the invoices or file the reports required by this Article, shall be prima facie presumed to have sold, delivered or used for taxable purposes all special fuels shown by a duly verified audit by the Comptroller, or any authorized representative thereof, to have been delivered to such supplier, dealer or user and unaccounted for at each place of business or place of storage from which special fuels are sold, delivered or used for any taxable purposes, and the Comptroller is hereby authorized to fix or establish the amount of taxes, penalties and interest due the State of Texas from such records of deliveries or from any records or information available to him and if the tax claim as developed from such procedure is not paid, such claim and any audit made by the Comptroller, or an authorized representative thereof, or any report filed by such supplier, dealer or user, shall be admissible in evidence in any suit or judicial proceedings filed by the Attorney General, and shall be prima facie evidence of the correctness of said claim or audit; provided that the prima facie presumption of the correctness of the claim may be overcome upon the trial by evidence adduced by said supplier, dealer or user.

(b) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, report, bond or other instrument referred to in this Article, and that the same had been adopted, promulgated, or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order, rule, regulation, report, bond, or other instrument without further proof of such adop-

tion, promulgation, execution or filing, and without further proof of its contents.

Sec. 17. Liens.

All taxes, penalties, interest and costs due by any supplier, dealer, or user under the provisions of this Article and all taxes collected by a supplier or dealer and required to be paid to this State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all of the property of any supplier, dealer or user, devoted to or used in his business or other operations as a supplier, dealer or user, which property shall include all plants, storage tanks, warehouses, office buildings, pumps, and equipment, vehicle tanks, trucks, trailers, or other vehicles, stocks on hand of every kind and character whatsoever used or usable in such business or other operations including special fuels and the proceeds from the sale or delivery of special fuels and including cash on hand and in banks, accounts and notes receivable, and any and all other property of every kind and character whatsoever and wherever situated, which is devoted to such use, and each tract of land on which such plants, storage tanks and other property are located, or which is used in carrying on such business or other operations.

This lien shall not be valid as against any "mortgagee" of a "motor vehicle" as those terms are defined in the Certificate of Title Act, provided such mortgagee does not have actual notice of the State's lien and has complied with the provisions of the Certificate of Title Act prior to the filing by the Comptroller of Public Accounts with the State Highway Department a certificate showing the make, body type and motor number of the motor vehicle upon which a tax lien exists and the amount of the taxes, penalties, interest, and costs due the State. The Comptroller of Public Accounts' certificate is to be filed with the State Highway Department and the State's lien need not be placed of record upon the motor vehicle's certificate of title.

The Comptroller of Public Accounts shall file with the State Highway Department a certificate containing the information above provided in this Section as to any motor vehicle upon

which a tax lien exists to secure the payment of the taxes owing by any supplier, dealer or user, and the filing of such certificate by the Comptroller of Public Accounts shall constitute sufficient notice of the existence and the assertion by the State of the statutory lien to secure the payment of the taxes owing to the State by such supplier, dealer or user, and any mortgagee of any mortgage, made after the filing of such certificate with the State Highway Department, shall be deemed to have notice of such lien, and the State's lien upon such motor vehicle shall continue to be a valid and prior lien as to any mortgagee. But such lien shall not be valid as to any mortgagee of a motor vehicle if the lien of such mortgagee was created and recorded prior to the filing of such certificate by the Comptroller of Public Accounts with the State Highway Commission.

The State Highway Department shall keep a record of the certificates filed by the Comptroller of Public Accounts and it shall charge a fee of One Dollar (\$1) and no more for answering any inquiry directed to its office as to certificates filed by the Comptroller of Public Accounts under the terms of this Article.

Sec. 18. Civil and Statutory Penalties.

(a) If any person affected by this Article shall fail or refuse to comply with any provision of this Article or shall violate the same, or shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Comptroller or shall violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to such penalties, if any supplier, dealer or user does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said supplier, dealer or user, within the time prescribed by law said supplier, dealer or user shall upon the first offense forfeit two per cent (2%) of the

amount due; and if said taxes are not paid within ten (10) days from the date of notice in writing by the Comptroller that any taxes have not been reported and paid, an additional eight per cent (8%) shall be forfeited; provided that upon each subsequent offense during any calendar year of failing to remit taxes collected or due the State within the time prescribed by law, such supplier, dealer or user shall forfeit twenty-five per cent (25%) of the amount due. All past due taxes and penalties shall draw interest at six per cent (6%) per annum.

(b) The venue of any suit, injunction or other proceedings at law or in equity available for the establishment of collection of any claim for delinquent taxes, penalties, or interest accruing hereunder, and the enforcement of the terms and provisions of this Article, shall be in a court of competent jurisdiction in Travis County, Texas, or in any other court of competent jurisdiction having venue under existing venue Statutes.

Sec. 19. Impounding Vehicles.

In order to enforce the provisions of this Article, the Comptroller or his authorized representatives, or any Highway Patrolman of the Department of Public Safety, any Sheriff, Constable and their deputies, or any other peace officer, is empowered to stop any motor vehicle which appears to be operating with special fuels for the purpose of examining the invoice required to be carried, and examining any permit or copy thereof that may be required to be carried, to take samples from the fuel supply tanks, and for such other investigations as could reasonably be made to determine whether the taxes have been paid or accounted for by a licensed user upon the special fuels being used to propel the motor vehicle upon the public highways of Texas. If after said examination or other investigation it is found the owner or operator of said motor vehicle has not paid said taxes, or does not possess a valid permit as a user to use such special fuels in motor vehicles operating on said public highways, such authorized officers shall impound the motor vehicle, and unless proof is produced within seventy-two (72) hours from the beginning of impoundment that the owner or operator has paid said taxes, and has paid all other taxes established by audit or investigation by the Comptroller, or his authorized

representatives, to be due upon the use of special fuels for the propulsion of motor vehicles upon the public highways of Texas, or that said owner or operator holds a valid user's permit to use special fuels for such purposes, the motor vehicle shall be held until all taxes, penalties and interest found to be due the State and all costs of impoundment have been paid, or until said owner or operator has filed bond with the Comptroller payable to the State Treasurer in an amount equal to twice the amount of taxes, penalties, interest and costs found to be due, to guarantee the payment of such liabilities to the State of Texas.

If the taxes, penalties, interest and costs found to be due are not paid, the Comptroller shall certify the claim to the Attorney General who shall file proceedings to foreclose the State's tax lien upon such motor vehicle, or take such other action to recover the amount due the State as provided by law.

Sec. 20. Subpoenas.

The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall, for the purpose contemplated by this Article have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, and documents.

If any witness refuses to obey such subpoenas or refuses to produce any pertinent books, accounts, records or documents, named in such subpoena and in the possession or control of said witness, or if any witness in attendance before the Comptroller or one of his authorized representatives refuses without reasonable cause to be examined or to answer any legal or pertinent question, or to produce any book, record, paper, or document when ordered to do so by the Comptroller or his authorized representative, the Comptroller or representative shall certify the facts and the names of the witnesses so failing and refusing to appear and testify, or refusing access to the books, records, papers, and documents, to the district court having jurisdiction of the witness; said court shall thereupon issue proper summons to said witness to appear before the said Comptroller, or his authorized representatives, at a

place designated within the jurisdiction of said court, on a day to be fixed, to be continued as occasion may require, and give such evidence and open for inspection such books, records, papers, and documents as may be required for the purpose of enforcing the provisions of this Article. Upon failure to obey such summons the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, paper, or document, which he was ordered to bring or produce, he shall forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Comptroller, or his authorized representatives, shall be paid their fees and mileage by the Comptroller out of funds appropriated to said Comptroller.

The Comptroller may, if necessary to enforce the provisions of this Section, require such number of his representatives as he deems necessary to enforce the provisions hereof to subscribe to the Constitutional Oath of office, a record of which shall be filed in the office of the Comptroller.

Sec. 21. Rules and Regulations.

It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes, penalties, interest and costs, due or that may become due under the provisions of this Article, and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Article. The Comptroller shall also have the power and authority to promulgate rules and regulations, not inconsistent with this Article or the Constitution of this State or the United States, for the enforcement of the provisions of this Article and the collection of all taxes, penalties, interest and costs provided in this Article.

Upon the adoption of any rule and regulation, the Comptroller shall cause the same to be published one time in a newspaper of general circulation in this State and the same shall have the force and effect of law as of the date

of publication, unless a subsequent date is specified therein. The publication thereof shall be sufficient notice to all parties.

Sec. 22. Allocation of Funds.

Before allocation of the funds collected hereunder is made one per cent (1%) of the gross amount of said fund shall be set aside in the State Treasury in a special fund for the use of the Comptroller in the administration and enforcement of the provisions of this Article and so much of said amount as may be needed is hereby appropriated for said purpose. Any unexpended portion of such fund shall at the end of each fiscal year revert to the respective funds in the proper proportions to which the special fuels taxes are allocated.

Each month the Comptroller shall, after making deductions for refund purposes as provided in Section 14 of this Article, and for the administration and enforcement of this Article, allocate and deposit the remainder of the taxes collected under the provisions of this Article, in the proportions as follows: One-fourth ($\frac{1}{4}$) of such taxes shall go to and be placed to the credit of the Available Free School Fund, and three-fourths ($\frac{3}{4}$) of such taxes shall go to and be placed to the credit of the State Highway Fund.

Sec. 23. Penalty, Failure to Pay or Conversion of Taxes.

(a) All taxes collected under the provisions of this Article shall be for the use and benefit of the State of Texas and shall not be appropriated or diverted to any other use. Said taxes shall be paid over to the State of Texas at the time and in the manner provided in this Article.

(b) If any supplier or dealer, or any director, officer, agent, employee, trustee, or receiver of such supplier or dealer, or any person, shall willfully fail or refuse to pay over to the State of Texas any such tax fund collected by him under the provisions of this Article, on or before the date such payment is required to be paid under the provisions of this Article, such supplier or dealer, or such director, officer, agent, employee, trustee, or receiver of such supplier or dealer, or such person, shall be guilty of a felony and upon conviction shall be punished by confinement in the state penitentiary for not more than ten (10) years, or by confinement in the

county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars (\$500) nor more than Ten Thousand Dollars (\$10,000) or by both such fine and jail imprisonment.

(c) If any director, officer, agent, employee, trustee, receiver of any supplier or dealer, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Article by such supplier or dealer, or any director, officer, agent, employee, trustee, receiver of such supplier or dealer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such supplier or dealer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Article, such director, officer, agent, employee, trustee, receiver, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the state penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars (\$500) nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment.

(d) If the penalties prescribed elsewhere in this Article overlap as to the offenses punishable under Section 23 of this Article, then the penalties prescribed in Section 23 shall apply and control over all such penalties. Venue of prosecution under Section 23 shall be in Travis County, Texas, or in the county where the offense occurred.

Sec. 24. Felony Penalties.

If any supplier, dealer or user, or any director, officer, agent, employee, or receiver of such supplier, dealer or user (a) shall sell, deliver or use special fuels upon which taxes are required to be collected or paid to the State of Texas without a valid permit being then and there held by such supplier, dealer or user, or (b) shall fail or refuse to make and deliver to the Comptroller within the time prescribed by law any report required to be made and delivered to the Comptroller by such supplier,

dealer or user, or (c) shall knowingly make and deliver to the Comptroller any report required to be made and delivered which is false or incomplete, or (d) shall fail or refuse to keep in Texas for the period of time prescribed by law any records required to be kept in Texas by such supplier, dealer or user, or (e) shall knowingly falsify or make false entry in any records required by law to be kept by such supplier, dealer or user, or (f) shall refuse to permit the Comptroller or any authorized representative of the Comptroller to examine or audit any books or records of such supplier, dealer or user which the Comptroller is authorized by law to examine or audit, or (g) shall refuse to permit the Comptroller or any authorized representative of the Comptroller to inspect or examine any plant, equipment, motor vehicle, material or premises where special fuels are processed, stored, sold, delivered, transported, or used by such supplier, dealer or user, or (h) shall refuse to surrender any motor vehicle for impoundment when such surrender is ordered by a representative of the Comptroller, or any officer authorized by law to impound such motor vehicle, or (i) shall knowingly make any false statement in any claim for a tax refund delivered to or filed with the Comptroller, such supplier, dealer or user, or such director, officer, agent, employee, or receiver of such supplier, dealer or user, shall be guilty of a felony and upon conviction, shall be punished by confinement in the state penitentiary for not more than five (5) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.

In addition to the foregoing penalties, a felony conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a supplier, dealer or user for a period of two (2) years from the date final judgment is entered.

If the penalties prescribed elsewhere in this Article overlap as to offenses punishable under this Section, then the penalties prescribed by this Section shall control over all such penalties except the penalties prescribed in Section 23 of this Article. Venue

of prosecution under this Section shall be in Travis County, Texas, or in the county in which the offense occurred.

Sec. 25. Misdemeanor Penalties. (a) If any person shall violate, or fail or refuse to comply with any provision of this Article for which no penalty is provided in Section 23 or Section 24 of this Article, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

(b) If any person shall violate, or fail or refuse to comply with any rule and regulation duly promulgated by the Comptroller under provisions of this Article, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

Sec. 26. That Section 14a of Article XVII of Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature, 1941, as added by Section 3 of Article II of Chapter 404, Acts of the Fifty-fourth Legislature, 1955 (compiled as Article 7065b-14a of Vernon's Civil Statutes of Texas), be and the same is hereby amended to be known and numbered hereafter as Section 14, which shall read as follows:

"Section 14. Provided, however, that when motor fuel is used or consumed, or is to be used or consumed by a transit company (1) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers; (2) which holds a franchise from such city or town; (3) whose rates are regulated by such city or town; (4) which pays to such city or town a tax on its gross receipts, such transit company which possesses the aforementioned four (4) characteristics, or any municipally owned and operated transit company shall be entitled to a refund of the taxes levied herein except that the one-fourth ($\frac{1}{4}$) of the taxes levied which is allocated to the Available School Fund by the Constitution of the State of Texas shall not be refunded.

"A transit company may obtain such refunds by conforming to the refund

procedure set forth in Section 13 of this Article and by furnishing to the Comptroller an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it has used, or will use such motor fuel only in the operation of its transit vehicles."

Sec. 27. That Section 26 and Section 27 of Chapter 184, Article XVII, Acts of the Regular Session of the Forty-seventh Legislature, as amended by Acts of the Fifty-second Legislature, 1951, Chapter 402, Article XXII, Section 8, be and the same are hereby amended to read hereafter as follows:

"Section 26. If any person (a) shall refuse to permit the Comptroller, the Attorney General, or their authorized representatives, to inspect, examine, and audit any books and records required to be kept by a distributor, refund dealer, or dealer, or (b) shall refuse to permit said persons to inspect and examine any plant, equipment, materials, or premises where motor fuel is produced, processed, stored, sold, delivered or used or (c) shall refuse to permit said persons to measure or gauge the contents of all storage tanks, pumps or containers on said premises, or take samples therefrom, or (d) shall conceal any motor fuel for the purposes of violating any provisions of this Article, or (e) shall transport motor fuel in a motor vehicle with pipe or tube connection from the cargo tank or container to the carburetor of said motor vehicle, or (f) shall sell or distribute motor fuel from a fuel tank or auxiliary fuel tank with a direct or indirect connection to the carburetor of a motor vehicle, or (g) if any dealer shall fail or refuse to keep in Texas for a period of time required by law, any books or records required to be kept by said dealer, or (h) if any dealer, or the agent or employee of any dealer, shall knowingly make any false entry or fail to make entry in the books and records required to be kept by a dealer, or (i) if any refund dealer shall refuse to surrender his refund dealer's license to the Comptroller upon suspension or cancellation of said license, or (j) shall refuse to surrender to the Comptroller all unissued invoices of exemption upon the suspension or cancellation of said license, or if any person (k) shall fail or refuse to comply with

any provision of this Article, or shall violate the same, or (l) shall fail or refuse to comply with any rule and regulation duly promulgated by the Comptroller, or shall violate the same, said person or persons shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

"Section 27. (a) Whoever shall knowingly transport in any manner any motor fuel, casinghead gasoline, drip gasoline, natural gasoline, or absorption gasoline, under a false manifest, or (b) whoever shall knowingly transport any of the foregoing named commodities in any quantity, for which a manifest is required to be carried, without then and there possessing or exhibiting upon demand by an authorized officer, a manifest, containing all the information required to be shown thereon, or (c) while transporting any of the foregoing named commodities, shall wilfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized hereunder to stop said motor vehicle, or (d) shall refuse to surrender his motor vehicle and cargo for impoundment when ordered to do so by a person authorized hereunder to impound said motor vehicle and cargo, or (e) whoever shall make a first sale, distribution, or use of motor fuel, upon which a tax is required to be paid by law, without then and there holding a valid distributor's permit issued by the Comptroller, or (f) whoever as a distributor shall fail or refuse to make and deliver to the Comptroller a report containing the information required by law to be made and delivered to said Comptroller, or (g) whoever shall knowingly make and deliver to the Comptroller any false or incomplete report required by law to be made and delivered to the Comptroller by a distributor, or (h) whoever as a distributor shall fail or refuse to keep in Texas for the period of time required by law any books and records required to be kept by a distributor, or (i) whoever shall knowingly make any false entry or shall wilfully fail to make entry in any books and records required to be kept by a distributor, or (j) whoever shall wilfully forge or falsify any invoice of exemption prescribed by law, or (k) whoever shall wilfully and knowingly make any

false statement in any claim for a tax refund delivered to or filed with the Comptroller, shall be guilty of a felony and upon conviction, shall be punished by confinement in the state penitentiary for not more than five (5) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a felony conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a distributor of motor fuel, or as a refund dealer, for a period of two (2) years from the date of such conviction.

"Provided, that if any penalties prescribed elsewhere in this Article shall overlap as to offenses which are also punishable under Section 27 of this Article, then the penalties prescribed in the said Section 27 shall apply and control over all such penalties. Venue of prosecution under Section 27 shall be in Travis County, Texas, or in the county in which the offense occurred."

ARTICLE II CIGARETTE TAX

Section 1. That Subsection (a) of Section 1 of Chapter 241, Acts of the Forty-fourth Legislature, 1935, as last amended by Chapter 310, Acts of the Forty-fifth Legislature, 1937, compiled as Subsection (a) of Section 1 of Article 7047c-1, Vernon's Annotated Civil Statutes of Texas, be and is hereby amended so as to hereafter read as follows:

"Section 1.

"(a) 'Cigarette' shall mean and include any roll for smoking made wholly or in part of tobacco irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material other than natural leaf tobacco in its natural state. Provided the definition herein shall not be construed to include cigars.

"By 'cigar,' as used herein, shall mean any roll of fermented tobacco wrapped in tobacco in any form. The main stream of smoke given off by a

cigar shall be of alkaline reaction to litmus paper; and the main stream of smoke of a cigarette shall be of acid reaction to litmus paper.

Sec. 2. That Subsection (a) of Section 2½ of Chapter 241, Acts of the Forty-fourth Legislature, 1935, as added by Section 2 of Article 1 of Chapter 404, Acts of the Fifty-fourth Legislature, 1955, compiled as Subsection (a) of Section 2½ of Article 7047c-1, Vernon's Annotated Civil Statutes of Texas, be and the same is hereby amended so as to hereafter read as follows:

"Section 2½. (a) In addition to the tax levied by Section 2 herein, there is hereby imposed a tax to be computed as follows:

"(1) From the effective date of this Section through August 31, 1961, a tax of One Dollar and Fifty Cents (\$1.50) per thousand on cigarettes weighing not more than three (3) pounds per thousand and One Dollar and Fifty Cents (\$1.50) per thousand on those weighing more than three (3) pounds per thousand on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever.

"(2) From and after September 1, 1961, a tax of One Dollar (\$1) per thousand on cigarettes weighing not more than three (3) pounds per thousand and One Dollars (\$1) per thousand on those weighing more than three (3) pounds per thousand on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever.

"Provided, however, that the said tax shall be paid only once by the person making the 'first sale' in this State and shall become due and payable as soon as such cigarettes are subject to a first sale in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a 'first sale' of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

Sec. 3. That Subsections (b) and (c) of Section 3 of Chapter 241, Acts of the Forty-fourth Legislature, Regular Session, 1935, as such Act was amended by Section 3 of Article

I of Chapter 404, Acts of the Fifty-fourth Legislature, Regular Session, 1955, which are compiled as Subsections (b) and (c) of Section 3 of Article 7047c-1, Vernon's Annotated Civil Statutes of Texas, are hereby amended so as to hereafter read as follows:

"(b) The Comptroller, acting through the Treasurer, shall, upon receipt of the stamps hereinabove authorized to be printed or manufactured, designate the date of issue of the new design of stamps by issuing a proclamation as hereinafter provided. Provided that the stamps shall be affixed by the distributor on each individual package of cigarettes that will be handled, sold, distributed, or used; that said stamps shall be supplied by said Treasurer to all distributors holding a permit at a discount of two per cent (2%) of the face value; provided, that no discount shall be allowed to out-of-State purchasers residing in the states that do not give discounts on cigarette tax stamps purchased from said states by Texas cigarette distributors; provided that if any distributor fails or refuses to comply with any provision of the cigarette tax law or violates the same, such distributor shall be required to pay the full face value for stamps purchased during the period of such offense and the Treasurer shall, upon receipt of an affidavit from the Comptroller, setting forth such violation, refuse to supply stamps at the discount provided until such offending distributor has paid any unauthorized discounts received by him and has otherwise purged himself of all such violations; provided further, that every distributor shall cause to be affixed to every individual package of cigarettes on which a tax is due, stamps of an amount equalling the tax due thereon, before any such distributor sells, offers for sale, or consumes, or otherwise distributes or transports the same.

"(c) The State Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued prior to a change in denomination and in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps for cigarette tax stamps of the new denomination. After the effective date of any increase in the tax levied by this Act, every person having in his possession stamps of the old denomination shall send them to the Treasurer for exchange at face value for

stamps of the new denomination. Such exchange shall be made within thirty (30) days after the effective date of any increase in the tax levied by this Act, and it shall be unlawful for any person to have in his possession any stamps of the old denomination after the expiration of thirty (30) days from the effective date of any increase in the tax levied by this Act. It shall further be unlawful for any person to sell, offer for sale, or possess for the purpose of sale, cigarettes to which stamps of the old denomination are affixed. After the expiration of thirty (30) days from the effective date of any increase in the tax levied by this Act, stamps of the old denomination shall be void, provided, that stamps removed from cigarettes determined by the Comptroller to be unsalable may be redeemed under rules and regulations promulgated or hereafter promulgated by the Comptroller. Every retail dealer and wholesale dealer having cigarettes to which stamps of the old denomination are affixed in his stock in quantities of two thousand (2,000) or more on the effective date of any increase in the tax levied by this Act shall immediately inventory the same and file a report of such inventory to the Comptroller and attach to such inventory a cashier's check payable to the State Treasurer in a sum equal to the amount of additional tax due on such cigarettes computed at the new rate. Such retail dealer or wholesale dealer shall retain as a receipt to evidence payment of the tax a purchaser's copy of the cashier's check and shall retain a copy of the inventory reported to the Comptroller. Failure or refusal to render such inventory shall be deemed sufficient grounds for the cancellation of any permit issued under this Act, and in addition thereto, any retail or wholesale dealer failing or refusing to render such inventory shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000)."

Sec. 4. That Chapter 241, Acts of the Forty-fourth Legislature, Regular Session, 1935, as amended, which is compiled as Article 7047c-1 of Vernon's Annotated Civil Statutes of Texas, be and is hereby amended by adding a new Section to be known as Section 15A to read as follows:

"Section 15A. (a) Permits required

by Sections 4, 8a and 15 of this Act issued after the effective date of this Section shall expire the last day of February following issuance. From the effective date of this Section the Comptroller shall prorate the fees for new or renewal permits required by Sections 4 or 15 of this Act by allowing a discount computed by quarters of the licensing year. The licensing year shall be from and shall include the first day of March through the last day of February of each year.

"(b) Each permit holder required to obtain a permit under Sections 4, 8a, or 15 of this Act who fails to obtain a renewal permit prior to the beginning of the licensing year shall pay, in addition to the permit fee, a late application fee of One Dollar (\$1), which shall be paid to the Comptroller at the time the permit fee is paid.

"(c) When it is necessary for any authorized representative of the Comptroller to visit any permit holder to collect a permit fee due under this Act the permit holder shall pay a service fee of Five Dollars (\$5) in addition to the permit fee.

"(d) In cases where any permit expires within three (3) months from the date of issuance or renewal because of the end of the licensing year, the Comptroller may with the consent of the permit holder collect both the discounted permit fee or permit fee for a current permit plus a permit fee for the entire licensing year following, and issue a permit or permits for both periods."

Sec. 5. That Chapter 241, Acts of the Forty-fourth Legislature, Regular Session, 1935, as amended, compiled as Article 7047c-1 of Vernon's Revised Civil Statutes of Texas is hereby amended by adding a new Section following Section 3B to be known as Section 3C to read as follows:

"Section 3C. The State Treasurer shall require that payment in full for stamps or meter settings be made within fifteen (15) days from the date the stamps or the set meter are received by the distributor. Upon receipt of an order for stamps or the setting of a meter, the State Treasurer shall ship such stamps or set meter in compliance with the order and transmit with the stamps or the meter a certified statement showing the amount due for said stamps or meter setting, and the distributor shall forward a remittance as payment in full of the amount certified

as due by the State Treasurer within fifteen (15) days after receipt of the stamps or the set meter and the certified statement. Any distributor who fails to forward the proper remittance within fifteen (15) days after receipt of the stamps or the set meter and the certified statement shall be notified by the State Treasurer within five (5) days after the end of the fifteen (15) day period to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps or the setting of meters as provided in this Section."

ARTICLE III CIGARS AND TOBACCO PRODUCTS TAX

Section 1. Definitions.

Whenever used in this Article:

(a) The word "Person" shall mean any individual, company, corporation, partnership, association, joint adventure, estate, trust or any other group or combination acting as a unit, and the plural, as well as the singular, unless the intention to give a more limited meaning is disclosed by the context.

(b) The word "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Distributor" shall mean any and each of the following:

(1) Any person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State from without the State any tobacco products for sale, use or consumption.

(2) Any person who makes, manufactures, or fabricates tobacco products in this State for sale, use, or consumption in this State.

(d) The word "Wholesaler" as used herein shall include dealers whose principal business is that of a wholesale dealer or jobber and who is known to the trade as such, who shall sell any cigars or tobacco products to licensed retail dealers only for the purpose of resale or giving it away, or exposing the same where it may be taken or purchased or otherwise acquired by the retailer.

(e) The word "Retailer" as used herein shall include every dealer other than the wholesale dealer as defined above whose principal business

is that of selling merchandise at retail, who shall sell or offer for sale cigars or tobacco products, irrespective of quantity or number of sales, giving the same away or exposing the same where it may be taken or purchased or otherwise acquired by the consumer.

(f) "Solicitor" shall mean any person representing a licensed non-resident supplier who shall solicit or take orders for tobacco products to be shipped in interstate commerce to a licensed distributor in this State.

(g) The word "Consumer" shall mean a person who comes into possession of tobacco products for the purpose of consuming them, giving them away, or disposing of them in any other way.

(h) The words "First Sale" shall mean and include the first sale or distribution of cigars or tobacco products in intrastate commerce in the State of Texas or the first use or consumption of cigars or tobacco products within this State.

(i) The words "Tobacco Products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug-cut, crimp-cut, ready-rubbed, and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including Cavendish, Twist, plug, scrap and any other kind and form of tobacco suitable for chewing, however prepared); and shall include any other articles or products made of tobacco or any substitute therefor, but shall not include snuff or cigarettes.

(j) The term "Distributing Agent" shall mean and include every person in this State who acts as an agent of any person outside the State by receiving cigars and tobacco products in interstate commerce and storing such items subject to distribution or delivery upon order from said person outside the State to distributors, wholesale dealers, and retail dealers, or to consumers within the State of Texas.

(k) The term "Drop Shipment" shall mean and include any delivery of cigars or tobacco products received by any person within this State when payment for such cigars or tobacco products is made to the shipper or seller, buyer, or through a person other than the consignee.

(1) The term "Cigar," as used herein, shall mean any roll of fermented tobacco wrapped in tobacco in any

form. The main stream of smoke given off by a cigar shall be of alkaline reaction to litmus paper; and the main stream of smoke of a cigarette shall be of acid reaction to litmus paper.

(m) The word "Dealer" shall include every person, firm, corporation, or association of persons who manufactures cigars or tobacco products for distribution, sale or use or consumption in the State of Texas. The word "Dealer" is also further defined as meaning any person, firm, corporation, or association of persons who imports cigars or tobacco products from any State or foreign country for distribution, sale, use, or consumption in the State of Texas.

(n) The word "Board" or "Board of Control" shall mean the Board of Control of the State of Texas.

(o) The word "Treasurer" shall mean the Treasurer of the State of Texas.

(p) The term "Retail Price" shall mean the price paid by the consumer for individual cigars or other tobacco products and shall be construed to mean the retail or selling price before adding the amount of the tax and shall be construed to mean the ordinary retail price.

Sec. 2. Tax Levy and Rate.

There is hereby levied a tax upon the "first sale" of cigars and tobacco products as those terms are defined herein, which tax shall be determined by the following schedule:

(a) Upon cigars of all description weighing not more than three (3) pounds per thousand, two cents (2¢) for each ten (10) cigars or fraction thereof;

(b) Upon cigars of all description weighing more than three (3) pounds per thousand retailing for not more than ten cents (10¢) each, Twenty-four Dollars (\$24) per thousand;

(c) Upon cigars of all description weighing more than three (3) pounds per thousand retailing for over ten cents (10¢) each but not more than twenty cents (20¢) each, Thirty-seven Dollars and Fifty Cents (\$37.50) per thousand;

(d) Upon cigars of all description weighing more than three (3) pounds per thousand retailing for more than twenty cents (20¢) each, Fifty Dollars (\$50) per thousand;

(e) Upon all chewing tobacco and all smoking tobacco including granulated, plug-cut, crimp-cut, ready-

rubbed, and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette: the tax shall be twenty-five per cent (25%) of the factory list price, exclusive of any trade discount, special discount, or deals.

Sec. 3. Tax on "first sale."

The tax levied herein shall be paid only once to the State Treasurer by the person making the "first sale" in this State. No person, however, shall be required to pay a tax on cigars or tobacco products brought into this State on or about his person in quantities or amounts which would ordinarily retail at twenty-five cents (25¢) or less when such cigars or tobacco products are actually used by said persons and not sold or offered for sale in this State.

Sec. 4. Report to be filed with Comptroller.

On or before the tenth (10th) day of each calendar month every distributor shall file with the Comptroller in Austin, Travis County, Texas, on a form prescribed by the Comptroller, a report covering the preceding month which shall show such information as the Comptroller may require of cigars and tobacco products handled by said distributor during the preceding month including all such products purchased, received, acquired or ordered, all such products sold, distributed, used, lost or otherwise disposed of, all such products on hand at the beginning and end of said month, and such other information pertinent to cigars and tobacco products handled and the taxes due on said products as the Comptroller may require.

The distributor shall, at the time of making said report, pay to the State of Texas at the office of the Comptroller the taxes levied herein upon all cigars and tobacco products sold, used or otherwise disposed of by him during the preceding month, which said tax payment shall be in legal tender or in proper form of money order or exchange made payable to the State Treasurer.

Sec. 5. Records Required.

(a) Every distributor, wholesale dealer and retail dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comp-

troller and the Attorney General a complete record of all tobacco products purchased or received by said distributor, wholesale dealer or retail dealer, including all invoices, bills of lading, way bills, freight bills, express receipts or copies thereof and all other shipping records furnished by the carrier and the seller or shipper of said tobacco products and in addition thereto a book record in a well-bound book which will provide complete information of all tobacco products purchased or received by said distributor, wholesale dealer or retail dealer at each place of business. Such book record shall show the date said tobacco products were received, with the designation of whether drop-shipment or otherwise, the name and address of the person from whom purchased and from whom received, the point from which shipped or delivered, the point at which received, the name of the carrier, if shipped by common carrier, the name of the boat or barge if shipped by water, whether registered mail, insured parcel post or open mail if received by mail the number and kind of tobacco products received on which tax has been paid, and, if a distributor, the number and kind of tobacco products received on which tax has been paid, and an inventory or inventories on the first of each month, showing the number and kind of tobacco products on hand on which tax has been paid.

(b) Every distributor and wholesale dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of each and every sale, distribution or use of tobacco products, regardless of whether or not the tax is due upon said tobacco products under the provisions of this Article, upon an invoice to be furnished by said distributor or wholesale dealer which invoice shall be issued in duplicate except when the sale or distribution is made by drop-shipment in which event the invoice shall be issued in triplicate, said invoice shall show the date of sale, distribution or use, the purchaser and his address, the means of delivery, the name of the carrier if delivered by common carrier, whether registered mail, insured parcel post or

open mail if delivered through the mail, the designation of drop-shipment if the sale is a drop-shipment made by a distributor, the quantity and kind of tobacco products sold, and if the sale is by a distributor the number and kind of tobacco products upon which required tax has been paid, and in addition thereto, the said invoices shall be supported by the receipts and other records furnished by the carrier of tobacco products. The original of said invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer as the case may be; provided however, that when tobacco products are distributed or exchanged in any manner where no sale is involved that an explanation of such transaction shall be stated on said invoice. Provided further that where a distributor or wholesale dealer sells tobacco products at retail it will be sufficient for said distributor or wholesale dealer and he shall be required to issue an invoice to his retail department for tobacco products to be sold at retail and such stock of tobacco products invoiced for retail sales shall be kept separate and apart from the other stock of said distributor or wholesale dealer; provided, further, that every distributor and wholesale dealer shall keep at each place of business in Texas for a period of two (2) years for the inspection at all times by the authorized authorities a book record in a well-bound book or books of all tobacco products sold, distributed or used by said distributor or wholesale dealer, such book record shall include all information required to be kept on the invoice aforesaid.

(c) Provided, that every person engaged in the business of selling tobacco products in interstate commerce only shall be required to keep such records and make such reports to the Comptroller as are required of a distributor.

(d) A salesman in the employ of a manufacturer, and handling only the products of his employer, who engages in the business of selling or distributing tobacco products on which tax has been paid in this State for the purpose of resale, shall be required to keep the same records, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, as are re-

quired of a wholesale dealer. Such salesmen shall also be required to deliver the original of the invoice required to be made to the purchaser or recipient of said tobacco products.

(e) "Solicitors" engaged in the business of soliciting orders for tobacco products for shipment to points within this State shall keep in Texas for a period of two (2) years for inspection at all times of the Comptroller and the Attorney General a complete record of all orders solicited and all orders taken for tobacco products for such shipments which record shall include the quantity and kind of tobacco products ordered or shipped, from whom ordered or shipped, the full name and correct address of the purchaser, the date said tobacco products were ordered, and if available, the date said tobacco products were shipped. Such record shall be kept for all tobacco products shipped to points within this State by the vendor whom the solicitor represents whether the order was taken by said solicitor or otherwise if said solicitor is given credit for or furnished records of such orders or such shipments.

All invoices, bills of lading, freight bills, way bills, express receipts, requisitions, and copies of orders required to be kept by the provisions of this Article, shall be kept separate and distinct from any records of other merchandise handled by the person required to keep such records.

Sec. 6. Sale of Permits and Fees.

(a) Every distributor, wholesale dealer and retail dealer in this State now engaged or who desires to become engaged, in the sale or use of tobacco products upon which a tax is required to be paid, shall, within thirty (30) days from the date this law becomes effective, file with the Comptroller an application for a permit as a distributor, wholesale dealer or retail dealer, as the case may be, said application to be accompanied by a fee of Twenty-five Dollars (\$25) if for a distributor's permit, or a fee of Fifteen Dollars (\$15) if for a wholesale dealer's permit, or a fee of Five Dollars (\$5) if for a retail dealer's permit. Said applications shall be on forms prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute

refusal is shown. Said forms shall set forth: (a) the manner under which such distributor, wholesale dealer or retail dealer transacts or intends to transact such business as distributor, wholesale dealer or retail dealer; (b) the principal office, residence and place of business in Texas for which the permit is to apply; (c) and if other than an individual, the principal officers or members thereof not to exceed three (3), and their addresses. The Comptroller may require any other information as he may desire in said applications. No distributor, wholesale dealer or retail dealer shall sell any tobacco products until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained. Said permits shall expire on the last day of February of each year, but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired. An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesale dealer or retail dealer. Provided, however, that the Comptroller may issue a joint permit as a distributor, wholesale dealer, retail dealer, or distributing agent for both cigarettes and tobacco products, in which case only one permit fee shall be paid by the permit holder. Provided, further, that any distributor manufacturing, importing, or acquiring in any other manner, tobacco products for his own personal use or consumption and not to be disposed of by sale, gift, or otherwise shall not be required to obtain a distributor's permit but shall be required to make the report required herein of a distributor and to comply with all other provisions of this Act affecting a distributor, provided further, that the Comptroller shall be authorized to accept any tax from any distributor acquiring tobacco products for his own personal use or consumption and not for sale or other disposal.

(b) Upon receipt of the application and fee herein provided for, the Comptroller shall issue to every distributor, wholesale dealer or retail dealer for the place of business designated, a nonassignable consecutively numbered permit, designating the kind of permit and authorizing the sale of tobacco products in this State. Said permit shall provide that the same is revocable and shall be forfeited or suspended upon any violation

of any provision of this Article or any reasonable rule or regulation adopted by the Comptroller. If such permit is revoked or suspended said distributor, wholesale dealer or retail dealer shall not sell any tobacco products from such place of business until a new permit is granted or suspension of the old permit removed.

Application for permit should be accompanied by remittance in cash, postal or express money order, or Austin exchange for the required amount. Any permit issued in exchange for a "personal" check will be conditioned upon final payment of such "personal" check, and may be revoked and cancelled by the State Comptroller after five (5) days notice to the dealer that payment of his check has been refused by the bank upon which drawn. No dealer shall make any sale or distribution of tobacco products after such revocation. Upon receipt of the necessary funds to redeem such dishonored check the State Comptroller may remove the suspension of the permit at his discretion. The permit when revoked shall be subject to recall and seizure by the State Comptroller.

The permit shall at all times be publicly displayed by the distributor, wholesale dealer or retail dealer at his place of business so as to be easily seen by the public and the persons authorized to inspect the same. Provided, further, that any person who operates both as a distributor and wholesale dealer in the same place of business shall only be required to obtain a distributor's permit for the particular place of business where such operation of said business is conducted, but if any distributor or wholesale dealer sells tobacco products at both wholesale and retail, an additional permit as a retail dealer shall be required. Any unexpired permit may be returned to the Comptroller for credit on the unexpired portion thereof only upon the purchase of a permit of a higher classification.

If the application is for a permit to sell tobacco products from or by means of a tobacco products vending machine, train, automobile, airplane, boat or other vehicle, the serial number of said vending machine, the make, motor number and State Highway license number of said automobile or other vehicle and the name of the railway company and number of said train, the name of the airplane,

the name of the boat, shall be shown on the application.

Permits shall be displayed on each tobacco products vending machine in a place easy to be seen by the public and officials authorized to inspect them. Such permits shall not be folded in a manner that will cover any of the information thereon. Permits assigned to trains shall be posted in the car where tobacco products are displayed or offered for sale. Permits assigned to automobiles or trucks shall be posted in a conspicuous place in the cab or driver's seat of such vehicle.

Sec. 7. Solicitor's Permit and Fee.

No individual shall offer for sale or solicit any order in this State for the sale of any tobacco products for shipment to points within this State, for his own account or for the account of any person, firm, association, or corporation, unless and until such person or individual shall have first filed an application for and obtained from the State Comptroller a solicitor's permit. Such permit shall authorize the permit holder to solicit orders for the sale of tobacco products and shall set forth the name and address of the vendor and/or employers whom the solicitor represents, and such solicitor shall not represent any vendor, and/or employers whose name does not appear upon such permit. The fee for such permit shall be One Dollar (\$1) per year or part thereof, and the permit shall expire on the last day of February, but may be renewed upon like application and upon payment of another fee in the amount prescribed. Such permit holder shall, on the fifth (5th) day of each month, file with the Comptroller, on proper forms to be supplied him by said official, copies of all orders solicited by him in the State during the preceding calendar month for tobacco products, said copies to show the quantity and kind of tobacco products ordered, by whom ordered, from what person, firm or corporation ordered, the full name and correct address of purchaser, the date said tobacco products were ordered and any other information which may be required by the Comptroller; and the failure of such permit holder to comply with the provisions hereof shall subject him to the forfeiture of his permit, after five (5) days notice and opportunity to be heard by the Comptroller of Public Accounts. No new permit shall be issued for a peri-

od of one (1) year to anyone whose permit has been forfeited, except in the discretion of the Comptroller.

If any person shall offer for sale or solicit any order in this State for the sale of tobacco products for shipment to a point within the State, without then and there having a valid solicitor's permit, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

Sec. 8. Bonds.

(a) Every distributor who is authorized by permit or required by law to make remittances or payments directly to this State of taxes collected upon the first sale of cigars and tobacco products or of taxes incurred upon the use of cigars and tobacco products shall file with his application for permit a bond in an amount to be set by the Comptroller at not less than three (3) times the amount of taxes that will accrue or may be expected to accrue during any month of the calendar year, but which bond shall never be less than One Thousand Dollars (\$1,000). Every such bond shall be executed by a surety company authorized to do business in this State, payable to the State of Texas, and shall remain in force from its effective date for a period of one (1) year, unless released by the Comptroller as herein provided. Such bond shall be conditioned upon the full, complete, and faithful performance by the person for whom it is issued of all of the conditions and requirements imposed on said person by this Article or by rules and regulations promulgated by the Comptroller, and shall expressly guarantee the remittance or payment to the State of Texas within the time prescribed by law of all taxes, penalties, interest, and costs required herein to be remitted or paid to this State by said person. Any such bond which is continuous in form may be continued in effect for a succeeding year by a renewal certificate acceptable to the Comptroller which said renewal certificate, when and if issued, shall have all the force and effect of an original bond.

(b) If the amount of any existing bond becomes insufficient, or any surety on a bond becomes unsatisfactory or unacceptable, the Comptroller may require the filing of a new or an additional bond. The Comptroller shall also have authority to require the

filing of reports and tax remittances at shorter intervals than one (1) month if, in his opinion, an existing bond has become insufficient. If any distributor licensed hereunder shall fail or refuse to file a new or an additional bond within ten (10) days after demand or shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the Comptroller, his permit shall be revoked or suspended in the manner herein provided. The filing of a new bond, or the cancellation or suspension of a permit, or recoveries on any bond, shall not invalidate an existing bond, but any surety on a bond shall be released and discharged from any and all liability accruing under such bond after the expiration of thirty (30) days from the date such surety has filed with the Comptroller at his office in Austin, Travis County, Texas, written request to be released and discharged. Such request shall not operate to release or discharge such surety from liabilities incurred prior to the expiration of said thirty-day period. The Comptroller shall, upon receipt of any such request, promptly notify the person in whose behalf such bond was filed, and unless said person shall file with the Comptroller a new bond in the amount and form herein provided within fifteen (15) days from the date of such notice, the Comptroller shall proceed to cancel the permit of said person.

(c) Any applicant for a permit may, in lieu of filing a surety bond, deposit cash in the amount of bond required in the Suspense Account of the State Treasury, or may deposit securities of a par value equal to the amount of bond required and of a class in which funds of The University of Texas may be legally invested. Such cash or securities shall be released within sixty (60) days after the cancellation or surrender of any permit held by the person in whose behalf they were deposited when said permit holder has been cleared of all tax liability by the Comptroller. The Comptroller is hereby authorized and empowered to withdraw and use any such cash and to sell any such securities and use the proceeds therefrom to pay off and satisfy any judgment secured in any action by this State to recover any taxes, costs, penalties, and interest found to be due said State by any person in whose behalf such cash or such securities were deposited. Any such person may acknowledge in writing the correctness

of the State's claim against him for taxes, costs, penalties and interest and may authorize the use of said cash or the proceeds from the sale of such securities to pay on or pay off the claim without having suit filed. Provided, suit may be filed against any surety or sureties on any bond furnished by a distributor, without resorting to or exhausting the assets of such distributor or without making said distributor, as principal obligor to said bond, a party to said suit.

Sec. 9. State to Have Preferred Lien.

All taxes, penalties, and cost of auditing as hereinafter provided, due, or that might become due by any distributor to the State shall be and become a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include manufacturing plants, storage plants, warehouses, office buildings and equipment, trucks, cars or other motor vehicles or any other equipment devoted to such use and each tract of land on which such manufacturing plant, storage plant, warehouse, office building or other property is located, and other tangible property which is used in carrying on such business and in addition thereto any and all tobacco products of said distributor. If any distributor shall fail to pay any taxes and penalties due the State in the proper manner provided for such payment the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly paid the distributor shall pay the reasonable expenses incurred in such investigation and audit as additional penalty. Provided, however, that all funds paid to the auditors of the Comptroller as expense incurred in making audits, shall be placed in a special fund in the State Treasury, which shall be used until exhausted, for making other audits, and said sums are hereby appropriated for that purpose. Provided that nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

Sec. 10. Suit for Tax, Evidence.

If any distributor or other person fails or refuses to pay any tax, penalties and cost of audit herein provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said tax claims, in any judicial proceedings, any report filed with the office of the Comptroller by such distributor or his representatives, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the quantity of tobacco products sold by such distributor or his representatives, upon which such tax penalty, and cost of audit has not been paid, or any audit made by the Comptroller or his representative from the books or records of said distributor, or other person when signed and sworn to by such representative as being made from the records of said distributor or persons from whom such distributor has bought, received, or delivered tobacco products, whether from a transportation company or otherwise, such report or audit, shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

Sec. 11. Venue.

Venue of any civil suit, writ of injunction or other civil proceedings filed under the provisions of this Article shall be in a court of competent jurisdiction, in Travis County, Texas, or in the county where the defendant in such proceedings has his domicile.

Sec. 12. Availability of Records.

Provided that if the place of business of any distributor, wholesale dealer or retail dealer is a vending machine, train, automobile, boat, or airplane, or other vehicle, such distributor, wholesale dealer or retail dealer, as the case may be, shall be required to designate in the application a permanent place where the records required to be kept for such place of business will be available to the Comptroller after the stocks are delivered from said vending machines, train, automobile or other vehicle and after such deliveries are made the records shall be kept at the permanent place so designated.

All tobacco products vending ma-

chine operators shall keep, at the place designated in the application to be the permanent place where records will be kept, a complete record of all tobacco products vending machines possessed, showing date each tobacco products vending machine was received from the seller, serial number of each tobacco products vending machine, present location of each tobacco products vending machine, date each tobacco products vending machine was placed on location, current permit number of each tobacco products vending machine, and date of expiration of each permit. If the tobacco products vending machine is sold or disposed of give name and address of the recipient of the tobacco products vending machine.

Provided that if a vending machine from which tobacco products are to be sold, has a valid cigarette dealer's permit, it will not be required for the vendor to apply for an additional permit for vending tobacco products. It will be necessary for this record to be shown in the requirements as described herein.

Sec. 13. Vending Machines.

It is expressly provided that no occupation tax shall be collected from any person vending tobacco products by means of a vending machine for the privilege of selling tobacco products only by means of such machines other than the permit fee herein imposed for each machine.

Sec. 14. Forfeiture or Suspension of Permits.

If any distributor, wholesale dealer or retail dealer has violated any provision of this Article, or any rule and regulation promulgated hereunder, the Comptroller shall have the power and authority to forfeit or suspend the permit or permits of said distributor, wholesale dealer or retail dealer by giving written notice stating the reason justifying such forfeiture or suspension and the same shall be forfeited or suspended five (5) days from date of said notice. Any notice required to be given by the Comptroller may be mailed to the distributor, wholesale dealer or the retail dealer, as the case may be, at any place designated as the place of business on the application for permit required herein. No new permit shall be issued within a period of one (1) year to anyone whose permit or permits have

been forfeited, except at the discretion of the Comptroller. If any permit is forfeited or suspended no tobacco products shall be sold from the place of business for which said permit applied until a new permit is granted or the suspension of the old permit renewed.

Sec. 15. Allocation of Revenues.

The funds derived from the issuance and sale of the permits to distributors, wholesale and retail dealers as herein provided shall be delivered to the Treasurer, and allocated in the same manner and in the same proportion as the funds derived from payment of tax.

Sec. 16. Application for Permit, Issuance, Records, Reports.

(a) Every distributing agent in this State now engaged or who desires to become engaged in the business of storing non-tax paid tobacco products previously sold in interstate commerce and received in interstate commerce for distribution or delivery only upon order received from without the State, shall within thirty (30) days from the effective date of this Article, file with the Comptroller an application for a distributing agent's permit, on a form prescribed by the Comptroller to be furnished upon written request, the failure to furnish shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Texas for which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The Comptroller may require any other information he may desire in said application. No distributing agent shall engage in such business until such application has been filed and the fee of One Hundred Dollars (\$100) paid for the permit and until the permit has been obtained. Said permit shall expire on the last day of February of each year. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

(b) Upon receipt of the application and permit fee herein provided for, the Comptroller shall issue to every

distributing agent, for the place of business designated, a nonassignable, consecutively numbered permit authorizing the storing and distribution of non-tax paid tobacco products within this State when such distribution is made upon interstate orders only. Permits shall be renewable at the expiration thereof upon the payment of another fee in the amount prescribed.

(c) Every distributing agent shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, a complete record of all tobacco products received by him, including all orders, invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records which are furnished to said distributing agent by the carrier and the shipper of said tobacco products, or copies thereof, and in addition thereto, a complete record of each and every distribution or delivery made by said distributing agent; such records of a distribution or delivery shall include all orders, invoices or copies thereof, and all other shipping records furnished by the carrier and the person ordering distribution or delivery of said tobacco products.

(d) Every distributing agent in Texas shall report to the Comptroller, on a form to be prescribed by the Comptroller and furnished by the distributing agent, each day excepting Sundays and holidays, all deliveries of tobacco products made by him on the preceding day or days. The report shall show the name of the person ordering the delivery, the date of delivery, and name and address of the person to whom delivered, the invoice number, the bill of lading or way bill number, the quantity and kind of tobacco products delivered, the means of delivery and/or the transportation agent and the designation of drop-shipment if a drop-shipment; provided, however, if the invoice furnished said distributing agent by the manufacturer or other person ordering such delivery, or the bill of lading prepared by said distributing agent to cover the shipment under said invoice, contains all the information required to be reported, it will be sufficient to send a copy of said invoice or invoices, or a copy of said

bill of lading, or bills of lading, to the Comptroller daily.

Sec. 17. Penalties.

If any distributor, wholesale dealer, retail dealer or distributing agent shall (a) fail to keep any of the records required to be kept by the provisions of this Article, or (b) if any distributor, wholesale dealer or retail dealer shall sell any tobacco products upon which a tax is required to be paid by this Article without at the time having a valid permit, or (c) if any distributor, wholesale dealer or distributing agent shall fail to make any reports to the Comptroller required herein to be made, or (d) make a false or incomplete report to said Comptroller, or (e) if any distributing agent shall store any tobacco products, on which the tax has not been paid, in the State or distribute or deliver any tobacco products on which the tax has not been paid, within this State without at the time of said storage or delivery having a valid permit, or (f) if any person affected by this Article shall fail or refuse to abide by the provisions hereof or the rules and regulations promulgated hereunder, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General in a Court of competent jurisdiction in Travis County, Texas, or in any other Court having jurisdiction.

Sec. 18. Inspection.

For the purpose of enabling the Comptroller to determine the tax liability of a distributor, wholesale dealer, retail dealer, distributing agent or any other person dealing in tobacco products or to determine whether a tax liability has been incurred, he shall have the right to inspect any premises where tobacco products are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange and to examine all of the records required herein to be kept or any other records that may be kept incident to the conduct of the tobacco products business of said distributor, wholesale dealer, retail dealer, distributing agent, or other person deal-

ing in tobacco products. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of tobacco products, and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred, and it shall be unlawful for any of the foregoing persons to fail to produce upon demand by the Comptroller any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

Sec. 19. Record of Carriers.

Every common and contract carrier transporting tobacco products in this State, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all tobacco products so transported or handled which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery, and the kind and quantity of tobacco products transported or handled. Such records together with all other books or records which may be in the custody of said carriers showing the shipment of tobacco products shall be open to the inspection at all times of the Comptroller, Attorney General, and their authorized representatives and said common and contract carriers shall give and permit such authorities free access to all such books and records and all tobacco products in the custody of such carrier.

Sec. 20. Unlawful Possession, Evidence.

Except as herein provided, it shall be unlawful for any person other than a distributor to have in his possession for sale, distribution or use, or for any other purpose, tobacco products upon which a tax is required to be paid by this Article, without having the proper evidence showing tax to have been paid, and the absence of such evidence shall be notice to all persons that the tax has not been paid and shall be prima facie evidence of the nonpayment of said tax.

No person, other than a common carrier, shall transport within this State tobacco products upon which a tax is required to be paid, without having evidence of tax payment on

said tobacco products or shall fail or refuse, upon demand of the Comptroller, to stop any vehicle transporting tobacco products for a full and complete inspection of the cargo carried.

No person shall knowingly use, consume or smoke, within this State, tobacco products upon which a tax is required to be paid without said tax having been paid.

No person shall use any artful device or deceptive practice to conceal any violation of this Article or mislead the Comptroller in the enforcement of this Article.

Sec. 21. Seizure, Sale by Comptroller.

All tobacco products on which taxes are imposed by this Article, which shall be found in the possession, or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the Tobacco Products Tax Law, and all tobacco products which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, boat, conveyance or other vehicle whatsoever, used in the removal or transportation of such tobacco products for such purposes, and all equipment, paraphernalia, or other tangible personal property incident to and used for such purposes, found in the place, building or vehicle where such tobacco products are found, may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such tobacco products, vehicles and property so seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisalment thereof at the usual and ordi-

nary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

The Attorney General, or the district or county attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service of citation upon nonresidents or unknown defendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of such process or the first publication of such notice. And in such cases, the court shall appoint an attorney to represent such defendant, who shall have the rights, duties and compensation as provided by existing Statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale thereof to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expense of seizure and court costs, shall be paid into the State Treasury and

shall be allocated as the tobacco products tax is herein allocated. In the event the district or county attorneys file and prosecute such cases, a fee of Fifteen Dollars (\$15) shall be paid to such officers in addition to all other fees allowed by law under the maximum fee bill, which fee shall be collected as court costs out of the proceeds of such sale.

In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the tobacco products and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars (\$500) or less by the following summary proceedings:

(1) The Comptroller shall publish a notice in some newspaper of the county where the seizure was made, describing the property seized and stating the time, place and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(2) Any person claiming such property so seized or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars (\$250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to Comptroller, he shall transmit the same with a certified copy of the report or receipt of the property seized, filed in his office, to the Attorney General or the county or district attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the court of competent jurisdiction as provided by law.

(3) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two (2) times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and after deducting

expense of seizure, appraisement, custody and sale, he shall deposit the proceeds thereof in the State Treasury, which shall be allocated to the funds to which the Tobacco Products Tax levied hereunder is apportioned.

In the event the tobacco products seized hereunder are sought to be sold upon forfeiture, summary sale, or other process provided by law shall be non-tax paid, the officers selling the same shall, upon sale thereof, cause to be paid the required tax and deduct the expense thereof from the proceeds of such sale.

Sec. 22. Seizure or Sale no Defense.

The seizure, forfeiture and sale of tobacco products and other property under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or exemption to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this Article or from liability to pay penalties provided by this Article, with or without suit therefor.

Sec. 23. Waiver permitted; Penalty.

Jurisdiction is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Article, or any part thereof, provided that the offender shall first pay the tax due on tobacco products seized, the amount and value of the tax necessary to represent the tax, and in addition to the tax required, pay into the State Treasury through the Comptroller a sum equal to the value of the tax required to be paid on such tobacco products. The said Comptroller may make a compromise with any claimant, before or after the claim is filed in court. A record of all such compromises and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection. If upon examination of invoices or other investigation the Comptroller finds the tobacco products to be sold without having been tax paid as required in this Article, he shall have the power to require of such person, to pay into the State Treasury through him a sum equal to twice the amount of the tax due. If upon examination of invoices or other investigation, such person is unable to furnish evidence

to the Comptroller of a report showing tax payment to cover non-tax paid tobacco products purchased by him, the prima facie presumption shall arise that such tobacco products were sold without reporting and remitting tax due.

Sec. 24. Disposition of Money.

All moneys collected by the Comptroller under the provisions of Section 23 of this Article, after payment of all cost and commissions, shall be paid to the Treasury and credited as the taxes imposed hereunder are credited.

Sec. 25. Duties of Comptroller; Rules and Regulations.

(a) It is hereby made the duty of the Comptroller to collect, supervise and enforce the collection of all taxes and penalties that may be due under the provisions of this Article and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Article. Said Comptroller also shall have the power and authority to make and publish rules and regulations, not inconsistent with this Article or the other laws or the Constitution of this State, or of the United States, for the enforcement of the provisions of this Article and the collection of revenues hereunder.

(b) The Comptroller shall promulgate rules and regulations providing for the allowance for credit of taxes paid on tobacco products where such tobacco products have become unfit for use or consumption, or unsaleable, and which tobacco products have been destroyed or returned to the manufacturer, upon proof satisfactory to the Comptroller that such tobacco products have become unfit for use or consumption or unsaleable and have been destroyed or returned to the manufacturer.

Sec. 26. Misdemeanors, Penalties.

(a) Whoever shall make a first sale of any cigars or any tobacco products without the tax having been paid or accounted for by a distributor holding a valid distributor's permit or (b) whoever shall sell, offer for sale, or present as a prize or gift any tobacco products on which the tax has not been paid, or accounted for by a distributor holding a valid distributor's permit, or (c) whoever shall knowingly consume, use or smoke any tobacco products upon which a tax is required to be paid without said tax

having been paid, or accounted for by a distributor holding a valid distributor's permit, or (d) whoever possesses in violation of any provision of this Article tobacco products upon which a tax in an amount of not more than Fifty Dollars (\$50) is required to be paid, or (e) whoever shall use any artful device or deceptive practice to conceal any violation of this Article, or (f) whoever shall mislead the Comptroller in the enforcement of this Article, or (g) whoever shall refuse to surrender to the Comptroller upon demand any tobacco products possessed in violation of any provision of this Article, or (h) whoever as distributor, or as agent, employee or representative of a distributor, shall make a first sale of any tobacco products without at the time of said first sale having a valid permit, or (i) shall make a first sale without at the time of said first sale having a permit posted so as to be easily seen by the public, or (j) whoever as a distributor, wholesale dealer, or the agent, employee or representative of a distributor or wholesale dealer, shall fail to deliver an invoice required by law to be delivered to a purchaser of tobacco products, or (k) whoever as wholesale dealer or retail dealer or the agent, employee or representative of a wholesale dealer or retail dealer, shall sell tobacco products without at the time of said sale having a valid permit, or (l) shall sell tobacco products without at the time of said sale having a permit posted so as to be easily seen by the public, or (m) whoever as distributing agent shall store or distribute tobacco products on which the tax has not been paid without at the time of said storage or distribution having a valid distributing agent's permit, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

Sec. 27. Felonies, Penalties.

(a) Whoever shall knowingly transport any tobacco products upon which a tax is required to be paid without said tax having been paid, or accounted for by a distributor holding a valid distributor's permit, or (b) while transporting tobacco products shall willfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized to

stop said motor vehicle, or (c) refuse to permit a full and complete inspection of his cargo by said authorized person, or (d) whoever shall refuse to permit a full and complete inspection by said authorized person of any premises, where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange, or (e) whoever shall possess in violation of any provision of this Article tobacco products upon which a tax in an amount of more than Fifty Dollars (\$50) is required to be paid, or (f) whoever as distributor or a distributing agent, or as the agent, employee, or representative of a distributor or distributing agent, shall knowingly make, deliver to and file with the Comptroller a false return or report, or an incomplete return or report, or (g) whoever shall knowingly fail to make and deliver to the Comptroller a return or report as required by the provisions of this Article to be made, or (h) whoever as distributor, wholesale dealer, retail dealer or distributing agent, or as the agent, employee, or representative of a distributor, wholesale dealer, retail dealer or distributing agent, shall destroy, mutilate or secrete any of the books or records required herein to be kept, or (i) shall refuse to permit the Comptroller or the Attorney General to inspect, examine and audit any books and records required herein to be kept, or any other records incident to the conduct of the tobacco products business that may be kept, or (j) shall knowingly make any false entry or fail to make entries in the books and records required by the provisions of this Article to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, or (k) shall fail to keep for a period of two (2) years in Texas any books and records required herein to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, shall be guilty of a felony and shall be punished by confinement in the state penitentiary for not more than two (2) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) or by both such fine and imprisonment.

Provided that if any penalties prescribed elsewhere in this Article overlap as to offenses which are also pun-

ishable under Section 27 of this Article, then the penalties prescribed by this Section 27 shall apply and control all other penalties.

Sec. 28. Venue for Felonies.

Venue of a prosecution under the preceding Section shall be in Travis County, Texas, or in the county of Texas where the offense occurred.

Sec. 29. Fees for New Permits Prorated.

Permits required by Sections 6, 8 and 16 of this Article issued after the effective date of this Article shall expire the last day of February following issuance. From the effective date of this Article the Comptroller shall prorate the fees for new permits required by Sections 6 and 16 of this Article by allowing a discount computed by quarters of the licensing year. The permit year shall be from the first day of March through the last day of February.

Each permit holder required to obtain a permit under Sections 6, 8 and 16 of this Article who fails to obtain a renewal permit prior to the beginning of the licensing year shall pay in addition to the permit fee a late application fee of One Dollar (\$1), which shall be paid to the Comptroller at the time the permit fee is paid.

When it is necessary for any authorized representative of the Comptroller to visit any permit holder to collect a permit fee due under this Article the permit holder shall pay a service fee of Five Dollars (\$5) in addition to the permit fee.

Sec. 30. Floor Stocks Taxed, Rate of Tax, Penalty.

Every person having possession of any tobacco products taxable under this Article for the purpose of sale on the effective date of this Article shall immediately inventory the same and file a report of such inventory with the Comptroller of Public Accounts and attach to such inventory a cashier's check payable to the State Treasurer in a sum equal to the tax due on such tobacco products computed at the rates provided in this Article. Such persons shall retain as a receipt to evidence payment of the tax a purchaser's copy of the cashier's check and shall retain a copy of the inventory reported to the Comptroller.

Failure or refusal to render such inventory shall be deemed sufficient grounds for refusal by the Comptrol-

ler to issue a permit required by this Article, and in addition thereto, any person failing or refusing to render such inventory shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000).

ARTICLE IV

DISTILLED SPIRITS AND WINE TAX

Section 1. Section 21 of Article 1, Chapter 467, Acts of the Second Called Session of the Forty-fourth Legislature as last amended by Section VIII of Chapter 402, Acts of the Fifty-second Legislature, Regular Session, 1951, compiled as Article 666-21, Vernon's Annotated Penal Code of Texas, shall be and is hereby amended so as to read hereafter as follows:

"Section 21. There is hereby levied and imposed on the first sale in addition to the other fees and taxes levied by this Act the following:

"(a) A tax of One Dollar and Sixty-eight Cents (\$1.68) per gallon on each gallon of distilled spirits, providing the minimum tax on any package of distilled spirits shall be \$0.105.

"(b) A tax of \$0.132 on each gallon of vinous liquor that does not contain over fourteen per cent (14%) of alcohol by volume.

"(c) a Tax of \$0.264 on each gallon of vinous liquor containing more than fourteen per cent (14%) and not more than twenty-four per cent (24%) of alcohol by volume.

"(d) A tax of \$0.330 on each gallon of artificially carbonated and natural sparkling vinous liquor.

"(e) A tax of \$0.660 on each gallon of vinous liquor containing alcohol in excess of twenty-four per cent (24%) by volume.

"(f) A tax of \$0.165 on each gallon of malt liquor containing alcohol in excess of four per cent (4%) by weight.

"The term 'first sale' as used in Article I of this Act shall mean and include the first sale, possession, distribution, or use in this State of any and all liquor refined, blended, manufactured, imported into, or in any other manner produced or acquired, possessed, or brought into this State.

"The tax herein levied shall be paid by affixing a stamp or stamps on each bottle or container of liquor. Said

stamps shall be affixed in strict accordance with any rule or regulation promulgated in pursuance of this Act; provided, however, any holder of a permit as a retail dealer as that term is defined herein shall be held liable for any tax due on any liquor sold on which the tax has not been paid.

"It shall be the duty of each person who makes a first sale of any liquor in this State to affix said stamps on each bottle or container of liquor and to cancel the same in accordance with any rule or regulation of the Board. The Board shall have power to relax the foregoing provision when in its judgment it would be impracticable to require the affixing of such stamp on the bottle or container, irrespective of any other provision of this Act. And any person, persons, or association who violates any portion of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year. Every holder of a permit authorizing the wholesaling of liquor, upon receipt of a shipment of liquor for sale within this State, under the provisions of this Act, shall prepare and furnish such information and such reports as may be required by rules and regulations of the Board. Any person authorized to export liquor from this State having in his possession any liquor intended for shipment to any place without the State, shall keep such liquors in a separate compartment from that of liquors intended for sale within the State so that the same may be easily inspected and shall attach to each such package of liquor so intended for shipment without the State a stamp of the kind and character that shall be required by proper rule and regulation denoting that the same is not intended for sale within the State. When such liquors are so kept and so stamped no tax on account thereof shall be charged. For defraying the expenses thereof, a charge of twenty-five cents (25c) shall be made for every such stamp, except that a charge of ten cents (10c) shall be made for each such stamp placed on vinous or malt liquors of twenty-four per cent (24%) alcoholic content or less. All such permittees authorized to transport liquor beyond the boundaries of this State shall fur-

nish to the Board duplicate copies of all invoices for the sale of such liquors, within twenty-four (24) hours after such liquors have been removed from their place of business."

ARTICLE V

MOTOR VEHICLE SALES TAX

Section 1. Section 1 of Article VI of House Bill No. 8, Acts of the Forty-seventh Legislature, Regular Session, 1941, Chapter 184, as last amended by Section 1 of Section VII of House Bill No. 285, Acts of the Fifty-second Legislature, Regular Session, 1951, Chapter 402, compiled as Section 1 of Article 7047k of Vernon's Annotated Civil Statutes of Texas, is amended so as to hereafter read as follows:

"Section 1. (a) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to 1.5% of the total consideration paid or to be paid to the seller by the buyer, which consideration shall include the amount paid or to be paid for said motor vehicle and all accessories attached thereto at the time of the sale, whether such consideration be in the nature of cash, credit, or exchange of other property, or a combination of these. In the event the consideration received by the seller includes any tax imposed by the Federal Government, then such Federal tax shall be deducted from such consideration for the purpose of computing the amount of tax levied by this Article upon such retail sale.

"(b) In all cases of retail sales involving the exchange of motor vehicles, the party transferring the title to the motor vehicle having the greater value shall be considered the seller, and no tax is imposed upon the transfer of a motor vehicle traded in upon the purchase of some other motor vehicle. Where such a retail sale involves an even exchange, each of the two (2) parties to the transaction shall pay a tax of Five Dollars (\$5). Where a person makes a gift of a motor vehicle, the donee shall pay a tax of Ten Dollars (\$10)."

Sec. 2. Section 2 of Article VI of House Bill No. 8, Acts of the Forty-seventh Legislature, Regular Session, 1941, Chapter 184, as last amended by Section 2 of Section VII of House Bill No. 285, Acts of the Fifty-second Legislature, Regular Session, 1951, Chapter 402, which is compiled as Section 2 of Article 7047k of Vernon's

Annotated Civil Statutes of Texas, is amended so as to hereafter read as follows:

"Section 2. (a) There is hereby levied a use tax upon every motor vehicle purchased at retail sale outside of this State and brought into this State for use upon the public highways thereof by a resident of this State or by a person, firm or corporation domiciled or doing business in this State. Such tax shall be equal to 1.5% of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person, firm, or corporation operating said motor vehicle upon the public highways of this State.

"(b) When a person makes application for the initial certificate of title in this State on a particular motor vehicle, he shall pay a use tax on that motor vehicle in the sum of Fifteen Dollars (\$15). No certificate of title or motor vehicle registration for such motor vehicle shall be issued until the use tax imposed by this Subsection has been paid. However, a person is not liable for the tax imposed by this Subsection if the sales or use tax imposed by any other provision of this Act has been previously paid upon such motor vehicle. It is the purpose of this Subsection to impose a use tax upon motor vehicles brought into this State by new residents of this State."

Sec. 3. Section 6 of Article VI of House Bill No. 8, Acts of the Forty-seventh Legislature, Regular Session, 1941, Chapter 184, as last amended by Section 5 of Section VII of House Bill No. 285, Acts of the Fifty-second Legislature, Regular Session, 1951, Chapter 402, compiled as Section 6 of Article 7047k of Vernon's Annotated Civil Statutes of Texas, is hereby amended to read hereafter as follows:

"Section 6. The Tax Assessor and Collector shall issue a receipt to the person paying taxes prescribed hereunder, making two (2) duplicate copies of said receipt, the form of said receipt to be prescribed by the Comptroller of Public Accounts. On the last day of each month, the Tax Collector shall forward ninety-six and one-half per cent (96.5%) of the money collected hereunder during said month to the Comptroller of Public Accounts, together with one (1) duplicate copy of each of the receipts issued by him to persons paying the tax to the

Collector. He shall retain the other duplicate receipt as a permanent record in his office together with three and one-half per cent (3.5%) of the money collected as fees of office, or paid into the officers salary fund of the county as provided by General Law."

Sec. 4, Subsection (b) of Section 3 of Article VI, House Bill No. 8, Acts of the Forty-seventh Legislature, Regular Session, 1941, Chapter 184, which is compiled as Subsection (b) of Section 3 of Article 7047k of Vernon's Annotated Civil Statutes of Texas, is amended so as to hereafter read as follows:

"(b) The term 'retail sale' or 'retail sales' as herein used shall include all sales of motor vehicles except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use other than to demonstrate it to a prospective purchaser."

Sec. 5. Section 5a, Acts of the Forty-seventh Legislature, Regular Session, 1941, Chapter 184, Article VI, as last amended by Section 4 of Section VII of House Bill No. 285, Acts of the Fifty-second Legislature, Regular Session, 1951, Chapter 402, which is compiled as Section 5a of Article 7047k of Vernon's Annotated Civil Statutes of Texas, is amended so as to hereafter read as follows:

"Section 5a. The purchaser and seller shall make a joint affidavit setting forth the then value in dollars of the total consideration, whether in money or other things of value, received or to be received by the seller or his nominee in a retail sale. Where a transfer of title to a motor vehicle is made either as the result of an even exchange or of a gift, the two (2) principal parties to such a transaction shall make a joint affidavit setting forth the facts describing the nature of the transaction. Where any party to a sale, exchange, even exchange or gift is a corporation, the president, vice president, secretary, manager or other authorized officer of the corporation shall make the affidavit for the corporation. When the tax imposed by this Act is paid to the Tax Assessor and Collector, the person upon whom the tax is imposed by this Act shall file with the Tax Assessor and Collector the joint affidavit required by this Section. The Tax Assessor and Collector shall keep copies of the affidavits until they have been called for by the Comptroller of Public

Accounts or his representative for auditing.

"(a) The seller shall keep complete records of each motor vehicle transferred by him at a retail sale including a true and complete copy of the invoice pertaining to the transaction described by such affidavit. Said invoice shall show the full price of the motor vehicle plus the itemized price of all accessories attached thereto. The record shall be retained by the seller at his principal office for at least two (2) years from the date of the transfer of the motor vehicle. All sales and supporting record of each seller shall be open to inspection by the Tax Assessor and Collector and the Comptroller of Public Accounts or his authorized representative.

"(b) Where the joint affidavit or the seller's invoice incorrectly states the amount of the consideration actually received by the seller so that the tax actually paid is less than that which was actually due, the seller shall pay an affidavit error fee as follows:

"(i) Twenty-five Dollars (\$25) if the actual consideration received by the seller was from five per cent (5%) through ten per cent (10%) greater than the consideration upon which the tax was paid, and

"(ii) One Hundred Dollars (\$100) if the actual consideration received by the seller was in excess of ten per cent (10%) greater than the consideration upon which the tax was paid.

"(c) The seller shall pay the affidavit error fee to the Tax Assessor and Collector. One-half ($\frac{1}{2}$) of the affidavit error fee shall be retained by the county as a fee of office or paid into the officers salary fund of the county, as is provided by General Law. The remainder of the affidavit error fee shall be paid over to the State."

ARTICLE VI UTILITIES TAX

Section 1. Article 7060 of the Revised Civil Statutes of Texas, 1925, as last amended by Section VI of Chapter 402, Acts of the Fifty-second Legislature, Regular Session, 1951, be and the same is hereby amended so as to read hereafter as follows:

"Article 7060. Gas, Electric Light, Power or Water Works. Each individual, company, corporation, or association owning, operating, managing, or controlling any gas, electric light, electric power, or water works,

or water and light plant, located within any incorporated town or city in this State, and used for local sale and distribution in said town or city, and charging for such gas, electric lights, electric power, or water, shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller under oath of the individual, or of the president, treasurer or superintendent of such company, or corporation, or association, showing the gross amount received from such business done in each such incorporated city or town within this State in the payment of charges for such gas, electric lights, electric power or water for the quarter next preceding. Said individual, company, corporation, or association, at the time of making said report for any such incorporated town or city of more than one thousand (1,000) inhabitants and less than two thousand five hundred (2,500) inhabitants, according to the last Federal Census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to .581% of said gross receipts, as shown by said report; and for any incorporated town or city of more than two thousand, five hundred (2,500) inhabitants and less than ten thousand (10,000) inhabitants, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.07% of said gross receipts, as shown by said report; and for any incorporated town or city of ten thousand (10,000) inhabitants or more, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.997% of said gross receipts, as shown by said report. Nothing herein shall apply to any such gas, electric light, power or water works, or water and light plant, within this State, owned and operated by any city or town, nor to any county or water improvement or conservation district.

"Nothing herein shall be construed to require payment of the tax on gross receipts herein levied more than once

on the same commodity, and where the commodity is produced by one (1) individual, company, corporation, or association, and distributed by another, the tax shall be paid by the distributor alone.

"No city or other political subdivision of this State, by virtue of its taxing power, proprietary power, police power or otherwise, shall impose an occupation tax or charge of any sort upon any person, corporation, or association required to pay an occupation tax under this Article. Nothing in this Article shall be construed as affecting in any way the collection of ad valorem taxes authorized by law; nor impairing or altering in any way the provisions of any contracts, agreements, or franchises now in existence, or hereafter made between a city and a public utility, relating to payments of any sort to a city. Nothing in this Article shall be construed as prohibiting an incorporated city or town from making a reasonable charge, otherwise lawful, for the use of its streets, alleys, and public ways by a public utility in the conduct of its business, and each such city shall have such right and power; but any such charges, whether designated as rentals or otherwise, and whether measured by gross receipts, units of installation, or in any manner, shall not in the aggregate exceed the equivalent of two per cent (2%) of the gross receipts of such utility within such municipality derived from the sale of gas, electric energy, or water. Any special taxes, rental, contributions, or charges accruing after the effective date of this Act, under the terms of any pre-existing contract or franchise, against any utility paying an occupation tax under this Article, when paid to any such city, shall be credited on the amount owed by such public utility on any charge or rental imposed for the use of streets, alleys, and public ways, levied by ordinance, and accruing after the effective date of this Act; provided that where valid ordinances have been enacted heretofore by cities imposing a charge or rental in excess of two per cent (2%) of the gross receipts of such utilities, nothing herein shall be construed so as to prohibit the collection of such sum as may be due said cities thereunder from the date of said ordinances up to the time this Article shall become effective.

"And provided further that utilities paying an occupation tax under this Article shall not hereafter be re-

quired to pay the license fee imposed in Article 5a, House Bill No. 18, Chapter 400, Acts of the Forty-fourth Legislature, for the privilege of selling gas and electric appliances and parts for the repairs thereof, in towns of three thousand (3,000) or less in population according to the next preceding Federal Census."

ARTICLE VII

CORPORATION FRANCHISE TAX

Section 1. Chapter Three, Title 122, Revised Civil Statutes of Texas, 1925, as amended, is hereby amended by the addition of a new Article to be denominated "Article 7084a," and reading as follows:

"Article 7084a. Additional Tax.

"In addition to all other taxes, there is hereby levied an additional franchise tax of seventy-five cents (75¢) per One Thousand Dollars (\$1,000), or fractional part thereof, of the entire taxable capital of all corporations as computed under Article 7084 of the Revised Civil Statutes of Texas, 1925, as amended, for the preceding fiscal year as shown in the report required to be filed with the Secretary of State between January 1 and March 15, 1959 (or the initial or first year report required to be filed with the Secretary of State), under the provisions of Article 7089 of the Revised Civil Statutes of Texas, 1925, as amended, upon the privilege of doing business in Texas in corporate form for the period beginning on the effective date of this Article, and ending April 30, 1960. The additional tax levied herein shall in no case be computed on a sum less than the assessed value, for county ad valorem tax purposes, of the property owned by the corporation in this State as shown in said report.

The tax levied herein shall be paid to the Secretary of State within thirty (30) days after the effective date of this Article. If any corporation fails to pay the additional tax levied by this Article within thirty (30) days after the effective date of this Article, the right of such corporation to do business in this State shall be forfeited, which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words, "right to do

business forfeited" and the date of such forfeiture, and provided further that such defaulting corporation shall be subject to the same penalties, liens and conditions as provided by Articles 7089, 7090, 7091, 7092, 7095, and 7096, Revised Civil Statutes of Texas, 1925, as amended.

In order to effect collection of the additional tax hereby levied, the Secretary of State shall mail to all corporations such notice or supplemental report forms as may be necessary, together with notice that for failure to pay the additional tax within thirty (30) days after the effective date of this Article the right of such corporations to do business in Texas will be forfeited, as above provided."

Sec. 2. This Article shall be cumulative of all other laws of this State.

Sec. 3. The Secretary of State shall have authority to promulgate such rules and regulations as he may deem necessary for the administration of this Article and the collection of the tax levied hereby and to require any reports necessary in connection with the reporting or collection of the additional tax levied hereby.

Sec. 4. For the fiscal year ending August 31, 1959, the Governor is hereby authorized and empowered to transfer to the Secretary of State Five Thousand Dollars (\$5,000) from Appropriation Account No. Y-3140 of the appropriation made to the Governor's Office in House Bill No. 133, Chapter 385, Acts of the Fifty-fifth Legislature, Regular Session, 1957. For the fiscal year ending August 31, 1960, there is hereby appropriated from any unexpended balance remaining in appropriation Account No. Y-3140 of the appropriation made to the Governor's office in House Bill No. 133, Chapter 385, Acts of the Fifty-fifth Legislature, Regular Session, 1957, the sum of Five Thousand Dollars (\$5,000), said appropriation to become available with the approval of the Governor. The appropriations referred to in this Section may be used by the Secretary of State for salaries, wages, postage, supplies, equipment, and all other necessary expenses in the administration and enforcement of the provisions of this Article, and the collection of the additional tax imposed and levied herein.

Sec. 5. Chapter Three, Title 122, Revised Civil Statutes of Texas, 1925, as amended, is hereby amended by the addition of a new Article to be known as "Article 7084b," to read as follows:

"Article 7084b. Additional Tax.

"In addition to the franchise tax due and payable under Article 7084, Revised Civil Statutes of Texas, 1925, as amended, there is hereby levied an additional franchise tax of fifty cents (50¢) per One Thousand Dollars (\$1,000), or fractional part thereof, of the entire taxable capital of all corporations, other than those exempt by law from the payment of the franchise tax imposed by Article 7084, Revised Civil Statutes of Texas, 1925, as amended, as computed under Article 7084, Revised Civil Statutes of Texas, 1925, as amended, upon the privilege of doing business in Texas in corporate form in the periods from May 1 of each year beginning May 1, 1960 to and including April 30 of the year following. The tax levied herein shall be paid at the same time, in the same manner, and subject to the same terms, penalties and conditions as the franchise tax that will become due and payable in the same periods under the provisions of the aforesaid Article 7084, Revised Civil Statutes of Texas, 1925, as amended.

"In order to effect the collection of the additional tax hereby levied, the Secretary of State shall mail to all corporations required to pay said additional tax such additional or supplemental report forms as he may deem necessary for the collection of said additional tax; and he shall also mail notice to the effect that for failure to file the required report and for failure to pay the additional tax, the right of such corporations to do business in Texas will be forfeited and will subject any such defaulting corporations to the same penalties and conditions provided by Articles 7089, 7090, 7091, 7092, 7095, and 7096, Revised Civil Statutes of Texas, 1925, as amended."

Sec. 6. The Secretary of State shall have the right to make and promulgate such rules and regulations as he deems necessary for the efficient and effective administration and enforcement of the additional tax imposed by Section 5 of this Article.

Sec. 7. The tax imposed by Section

5 of this Article shall be cumulative of all other taxes imposed by this State.

ARTICLE VIII

SEVERANCE BENEFICIARY TAX

Section 1. (1) In addition to the occupation tax on producers of natural gas levied by the Acts codified as Article 7047b of Vernon's Civil Statutes of Texas, there is hereby levied an occupation tax on the occupation or privilege of obtaining the production of Dedicated Gas within this State, and on the business or occupation of producing such gas, to be known as the "Severance Beneficiary Tax," and to be computed as follows:

The rate of said tax shall be one and one-half per cent ($1\frac{1}{2}\%$) of the market value of gas as and when produced.

In calculating the tax herein levied, there shall be excluded: (1) gas injected into the earth in this State, unless sold for such purpose; (2) gas produced from oil wells with oil and lawfully vented or flared; (3) gas used for lifting oil unless sold for such purposes; (4) gas used in connection with the irrigation of lands in Texas; and (5) gas used in the manufacturing of carbon black.

(2) The market value of gas subject to the tax hereby levied shall be the value thereof at the mouth of the well except in cases where liquid hydrocarbons are extracted or recovered therefrom in this State, in which event the market value shall be the value of the residue gas remaining after such extraction or removal and no additional tax on liquid hydrocarbons extracted or recovered from gas is levied by this Article.

(3) The tax hereby levied is an occupation tax on the occupation or privilege of obtaining the production of "Dedicated Gas" and on the business or occupation of producing such gas as a "Severance Beneficiary," as these terms are defined herein.

(4) The tax hereby levied shall be a liability of the producer of gas, but if produced for or sold to a severance beneficiary other than the producer, the tax shall be paid by the severance beneficiary. In no event shall the severance beneficiary deduct, charge, or collect the tax hereby levied from his payments to the producer, and no contract or agreement heretofore or hereafter made shall be interpreted as requiring the producer to pay any por-

tion of the tax which is the liability of the severance beneficiary under the provisions of this Article. It is hereby declared to be against the public policy of this State, and to contribute to economic and actual waste, and to be an unlawful limitation upon the conservation and taxing powers of the State of Texas, for any contract to require the producer to pay the severance beneficiary tax hereby levied when there is a severance beneficiary as defined herein other than the producer himself; it being the intention of this Article that the producer shall be required to pay the tax hereby levied only if the gas is produced for his own use or independent sale and not under any prior contract to produce for sale to another. It shall be the duty of each producer to keep accurate records in Texas of all gas produced and to make monthly reports under oath as hereinafter provided.

(5) The first purchaser of gas shall pay the tax on gas purchased, and if he is not the severance beneficiary, shall collect the tax so paid from the severance beneficiary, making such payments so collected to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Such moneys so collected for the payment of this tax shall be held by the purchaser in trust for the use and benefit of the State of Texas and shall not be commingled with any other funds held by such said purchaser, and shall be remitted to the State Treasurer in accordance with the terms and provisions of this Article; and it shall be the duty of each such purchaser to keep accurate records in Texas of all such gas purchased or obtained as hereinafter provided and to make and deliver to the Comptroller verified monthly reports thereof. If there is no first purchaser or severance beneficiary other than the producer, then the producer shall pay to the Comptroller the tax levied by this Article.

(6) The tax herein levied shall be due and payable at the office of the Comptroller at Austin on the last day of the calendar month, based on the amount of gas produced and saved during the preceding calendar month, and on or before said date each producer and severance beneficiary and first purchaser shall make and deliver to the Comptroller a verified report on forms prescribed by the Comptroller showing the gross amount of gas

produced and purchased, less the exclusions and at the pressure base set out herein, upon which the tax herein levied accrues, together with details as to amount of gas, from what leases said gas was produced, and the correct name and address of the severance beneficiary, and first purchaser and such other information as the Comptroller may desire, such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied.

(7) Provided, that unless such payment of tax on all gas produced during any month or fractional part thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until date paid.

Sec. 2. (1) For the purpose of this Article, "producer" shall mean any person (other than a non-operating royalty owner) owning, controlling, managing, or leasing any gas well or land producing gas, and any person who produces in any manner any gas by taking it from the earth or waters in this State.

(2) "First Purchaser" shall mean any person purchasing gas from the producer.

(3) "Dedicated Gas" shall include all gas withdrawn from the lands or waters of this State for the use and benefit of a severance beneficiary.

(4) "Severance Beneficiary" shall mean any person for whose use and benefit gas is withdrawn from the land or waters of this State. Where a contract in writing confers upon one person the prior right to take title to gas produced from particular lands, leases or reservoirs in this State and other persons are obligated to maintain and operate wells, gathering or dehydration facilities or to process or treat such gas so as to make delivery thereof as required by such contract, it shall be conclusively presumed (i) that by such contract gas in place under lands or leases or within such reservoirs has been pledged, dedicated and set apart to satisfy such contract and (ii) that any gas which is delivered and accepted under such contract has been withdrawn from the lands and waters

of this State for the use and benefit of the person taking title to such gas by virtue of such contract. If there be more than one such contract covering the same gas, the tax hereby levied shall be the liability of the person who ultimately takes title to the gas in this State by virtue of such contracts. In all other instances, it shall be conclusively presumed that gas when withdrawn from the lands and waters of this State is withdrawn for the use and benefit of the person taking it from the land or waters in this State and having the original possessory right thereto as and when the same is produced.

(5) "Gas" shall mean natural and casinghead gas or other gas taken from the earth or waters, regardless of whether produced from a gas well or from a well also productive of oil, distillate, and/or condensate, or other produce.

(6) The term "casinghead gas" shall mean any gas and/or vapor indigenous to an oil stratum and produced from such stratum with oil.

(7) "Report" shall mean any report required to be furnished in this Article or that may be required by the Comptroller in the administration of its provisions.

(8) "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(9) "Production" or "total gas produced" shall mean the total gross amount of gas produced. The tax imposed by this Article shall be measured or determined by meter readings showing one hundred per cent (100%) of the full volume expressed in cubic feet.

(10) For the purposes of this Article, the term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas (including natural and casinghead) contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be sixty (60) degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the above standard, conversion of the volume from these conditions

to the standard conditions shall be made in accordance with the Ideal Gas Laws, corrected for deviation.

(11) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

Sec. 3. (1) When it shall appear that a taxpayer to whom the provisions of this Article shall apply has erroneously paid more taxes than were due during any tax-paying period either on account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(2) The failure of a first purchaser or a severance beneficiary to pay the tax levied by this Article shall not relieve any subsequent purchaser from the payment of same, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself or itself that the tax on said gas has been or will be paid by the person primarily liable therefor.

(3) The payment of the tax levied by this Article may be accompanied by written protest, and the taxpayer shall have the right to file suit for the recovery thereof, as provided in Sections 1, 2 and 2(a) of Article 7057b of Vernon's Civil Statutes. The money so paid to the Comptroller under protest shall be transmitted to the State Treasurer and paid into the proper funds as provided in this Act. Such payments shall not be subject to the provisions of Section 3, 4, 5 and 6 of Article 7057b of Vernon's Civil Statutes.

Sec. 4. The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers, purchasers, and severance beneficiaries to determine whether the tax is being properly reported and paid. He shall have the power to enter upon the premises of any taxpayer liable for a tax under this Article, and any other premises necessary in determining the correct tax liability, and to examine, or cause to be examined, any books, or records of any person, subject to a tax under this Article, and to secure any other information directly or indirectly concerned in the enforcement of this Article, and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this Article, which shall have

the full force and effect of law. Before any division or allotment of the occupation tax collected under the provisions of this Article is made, one-half ($\frac{1}{2}$) of one per cent (1%) of the gross amount of said tax shall be set aside in the Treasury for the use of the Comptroller in the administration and enforcement of the provisions of this Article; and so much of the said proceeds of one-half ($\frac{1}{2}$) of one per cent (1%) of the occupation tax paid monthly as may be needed in such administration and enforcement is hereby allocated for such purpose, subject however to appropriation by the Legislature.

Sec. 5. In the event any severance beneficiary or first purchaser of gas in this State shall become delinquent in the payment of the proper taxes herein imposed, or fails to file required reports with the Comptroller, the Attorney General by a suit in the name of the State of Texas shall have the right to enjoin such persons from producing, purchasing, delivering or taking delivery of gas until the delinquent tax is paid or said reports filed, and the venue of any such suit for injunction is hereby fixed in Travis County.

Sec. 6. Severance beneficiaries, first purchasers and producers shall be subject to a penalty of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) for failure or omission to keep the records required herein or for the violation of any of the other provisions hereof, and each day's violation shall constitute a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interest on all property and equipment used by a severance beneficiary or first purchaser of gas in his business of producing gas or purchasing gas, and if any severance beneficiary or first purchaser of gas shall fail to remit the proper taxes, penalties, and interest due, or any of them, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and the severance beneficiary and first purchaser of gas shall be liable, as additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller incurred in such investigation and audit; provided, that all funds collected for audits and examinations shall be placed in the Natural and Casinghead Gas Audit Fund in the

State Treasury and shall constitute a revolving fund which may be used from time to time by the Comptroller in making such audits in addition to the general appropriation made for such purposes, and all of said funds to be placed in said Natural and Casinghead Gas Audit Fund are hereby allocated for such purpose. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due, and for the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in Travis County.

Sec. 7. (1) If any severance beneficiary or first purchaser of gas fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Article and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such severance beneficiary or first purchaser or representative of said severance beneficiary or purchaser, or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of gas produced on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representatives from the books of said severance beneficiary or purchaser when filed and sworn to by such representative as being made from the records of said severance beneficiary or first purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided further, that such report or audit may be admitted in evidence only against the party by or from whom it was made.

(2) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said severance beneficiary or first purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid, and that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of

Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

(3) On notice from the State Comptroller, it shall be unlawful for any person to produce or remove any gas from any lease in this State whenever the severance beneficiary, first purchaser or producer has failed to file reports as required under the provisions of this Article.

(4) Whenever any lease producing gas changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the person who will operate said lease and be responsible for the filing of reports provided for in this Article. It further shall be the duty of the new owner or operator of said lease to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the person formerly owning and/or operating said lease.

Sec. 8. It is the expressed and declared intention of the Legislature of the State of Texas, that the tax hereinabove imposed shall never be the liability or the obligation of the producer, except in those cases where the producer is the severance beneficiary as herein defined.

ARTICLE IX

CAMERAS, LENSES AND FILM TAX

Section 1. Definitions.

As used in this Article the following words shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Person" shall mean and include any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, any agency, institution or instrumentality of the United States, this State, any agency, institution, political subdivision or instrumentality of this State, or any other group or combination acting as a unit.

(b) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Retailer" shall mean and include every person in this State who manufactures, produces, or in any other manner acquires or possesses any of the items taxable under this Article for the purpose of making a resale, distribution, or use of the same in this State to the user; and it shall also include every person in this State who ships, transports or imports into this State any item taxable under this Article and makes the first distribution of, use by, or sale to the user of same in this State.

(d) "Distributor" shall mean and include every person other than a retailer who engages in the business of distributing or selling any item taxable under this Article within this State. If any distributor shall sell, use or distribute any item taxable under this Article to any person not holding a valid permit as required by this Article, said distributor shall qualify as a retailer and be liable for and shall be required to pay over to the State, at the time and in the manner herein provided for a retailer, the tax due on the item taxable under this Article.

(e) "Retail Sale" shall mean any transfer, exchange or barter of any item taxable under this Article, conditional or otherwise, in any manner or by any means whatsoever, to the user and shall include conditional sales, installment lease sales, and any other transfer of an item taxable under this Article in which the title is retained as security for payment of the purchase price and is intended to be transferred later. It shall also mean the first sale or distribution in this State to the user of any item taxable under this Article which has been imported or brought into the State, or which has been manufactured, constructed, produced, or assembled in Texas, or acquired in any manner without the tax having been previously paid thereon in Texas.

(f) "Distribution" shall mean and include any transaction other than a retail sale in which ownership or title to any item taxable under this Article is passed to a user.

(g) "Use" shall mean the keeping or retention in this State of any item taxable under this Article by the user, or the exercise of any right or power over any such item incident to the ownership thereof. The term "use" shall not include the storing, keeping,

or retention of items taxable under this Article in any place of business where such items are sold, or offered for sale, or demonstrated for sale in the regular course of business conducted at such places, nor shall the said term include items taxable under this Article which are crated and stored in Texas for sale and delivery outside the State of Texas.

(h) "Retail Sale Price" shall mean the actual price, valued in money, paid or required to be paid, as a consideration in the purchase or acquisition of any item taxable under this Article by the user, and without any deductions being made therefrom on account of cost of materials, labor, transportation charges, or any expenses whatsoever, including allowance for any trade-ins.

(i) "User" shall mean and include every person who purchases, uses or acquires in any other manner any item taxable under this Article for his own use in Texas and who does not purchase or acquire same for the purpose of resale.

(j) "State, This State" shall mean the State of Texas.

(k) "In This State, Within This State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

Sec. 2. Camera, Camera Lenses, Film, Film Projectors, Photographic Apparatus and Equipment Excise Tax Imposed.

There is hereby levied and shall be imposed upon the sale, distribution or use in this State of cameras, camera lenses, unexposed photographic film in rolls (including motion picture film), electric motion or still picture projectors of the household type, photographic apparatus and equipment an excise tax equivalent to three per cent (3%) of the retail price for which any such items are sold.

From and after the effective date of this Article every person who imports or in any other manner acquires for use in this State any item taxable under this Article upon which said tax has not theretofore been paid to the State of Texas shall for the purposes of this Article be considered as a retailer and shall report and pay said tax equal to three per cent (3%) of the retail price thereof to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however,

that the tax imposed under this Article shall not apply to (1) X-ray cameras or cameras weighing more than four (4) pounds exclusive of lens and accessories; (2) still camera lenses having a focal length of more than one hundred and twenty (120) millimeters, or motion picture camera lenses having a focal length of more than thirty (30) millimeters; X-ray film, unperforated microfilm, film more than one hundred and fifty (150) feet in length, or film more than twenty-five (25) feet in length and more than thirty (30) millimeters in width.

Sec. 3. Method of Imposition, Fiduciary Relationship Established, Legislative Intent, Taxes to be in Lieu of Any Other Excise Taxes on Items Taxed under This Article.

(a) Every retailer who makes a sale or distribution of an item taxable under this Article in Texas to the user shall add the amount of said tax to the selling price of such item which said tax shall be collected from the purchaser or recipient of such item at the time of such sale or distribution, and said tax shall be reported and paid to the State of Texas as hereinafter provided.

(b) It is the intent of this Article that the tax imposed herein shall constitute an excise tax imposed on the persons using items taxable under this Article and the granting of a permit to retailers to collect such taxes for and in behalf of the State of Texas, shall be deemed to establish a fiduciary relationship.

(c) In the event any tax imposed upon the sale, distribution, or use of any item taxable under this Article is in conflict with the Constitution or laws of the United States or the Constitution of Texas, then it is hereby declared to be the intention of this Article to impose such tax on the first subsequent sale, distribution, or use of such item which may be subject to being taxed.

(d) The excise tax imposed under this Article shall be in lieu of any other excise tax imposed by the State of Texas or any political subdivision or instrumentality thereof, upon the items taxable under this Article.

Sec. 4. Promulgation of Rules and Regulations by Comptroller.

The Comptroller is hereby vested with power and authority to promulgate rules and regulations, not inconsistent with this Article, for the

enforcement of the provisions of this Article and the collection of the revenues levied hereunder.

Sec. 5. Payment of Tax, Reports Required.

(a) Every retailer who shall be required to collect any of the taxes imposed by this Article upon the sale or distribution of any of the items taxable under this Article in this State, or who shall be required to pay the tax levied herein upon any item taxable under this Article used by said retailer, shall on or before the tenth (10th) day of each month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, ninety-nine per cent (99%) of the amount of tax or taxes required to be collected during the calendar month immediately preceding, and one hundred per cent (100%) of the amount of tax or taxes required to be paid for items taxable under this Article which are used by said retailer during said period. Provided, however, that this discount shall be allowed only when a retailer files the report and pays the amount of tax due within the time specified for such report and payment, and provided further, that the maximum amount of money allowed to be retained by any retailer under this discount provision shall not exceed One Thousand Dollars (\$1,000) in any one (1) month. At the time of payment of the tax or taxes due, each retailer shall also make and deliver to the Comptroller at his office in Austin, Travis County, Texas, a report properly sworn to and executed by such retailer, or his representative in charge, which shall show the date such report was executed, the name and address of said retailer and the month which the report covers, and shall show separately by units and value in money the items taxable under this Article on hand at the beginning and end of the month and complete information on all taxable items handled during the month including: value of taxable items received in interstate commerce, value of items purchased or received in intrastate commerce, reflecting separately the number of taxable items and value thereof received with the tax paid and the number of taxable items and value thereof received without the tax having been paid; the number of taxable items and value thereof manufactured or assembled in Texas; the number of taxable items and value thereof sold

in interstate commerce; the number of taxable items and value thereof returned to the manufacturer; the number of taxable units and value thereof lost by fire or other accident; the number of taxable items and value thereof used for taxable purposes by the retailer and his representatives, and shall include gross value of all retail sales of all items taxable under this Article. Provided that where a retailer has not sold, distributed, or used any taxable items during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any retailer to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every retailer, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in amount of tax for the period covered by the report.

(b) If any retailer shall fail to remit proper taxes collected upon the sale or distribution of any item taxable under this Article, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the retailer shall pay as additional penalty any reasonable expenses incurred by the Comptroller in such audit.

Sec. 6. Penalties for Failure to Pay or Misappropriation of Taxes Imposed.

(a) All taxes collected hereunder by any retailer, or by any director, officer, agent, employee, trustee, receiver of such retailer, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Article.

(b) If any such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or any person shall willfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Article, on or before the date such payment is due as provided by this Article, such retailer or such

director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and shall be punished by confinement in the state penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.

(c) If any director, officer, agent, employee, trustee, receiver of any retailer, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Article by such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such retailer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Article, such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month, nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. Venue of prosecution under this Section shall be in Travis County, Texas, or in the county in which the offense occurs.

Sec. 7. Permits Required.

(a) From and after the effective date of this Article, all retailers of items taxable under this Article in this State now engaged or who desire to become engaged in the sale, use or distribution of items taxable under this Article, shall file a duly acknowledged application for a retailer's permit, which shall be nonassignable, with the Comptroller, said application to be accompanied by a fee of Five Dollars (\$5). Said applications to be on a form prescribed by the Comptroller, to be furnished upon written request, the failure to furnish

which shall be no excuse for the failure to file the same unless an absolute refusal is shown. An application shall be filed and a permit obtained for each place of business owned or operated by a retailer. Said form shall set forth the name under which such retailer transacts or intends to transact such business as retailer, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office address. The Comptroller may require in said application such other information as he may desire. No retailer shall make a sale, use, or distribution of any item taxable under this Article until such application has been filed and a permit has been obtained.

(b) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every retailer a nonassignable, consecutively numbered permit authorizing the sale, use, or distribution of items taxable under this Article in this State from the date of the issuance of said permit, until and including the following August 31st. On or before September 1st of each year, and before any retailer shall make a sale, use, or distribution of items taxable under this Article or engage in selling items taxable under this Article in this State after August 31st, an application shall be filed and a permit obtained for the fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Article, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said retailer shall not sell, use or distribute items upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this Article.

Sec. 8. Bond Required.

(a) Before any permit shall be issued and before engaging in the sale, use or distribution of any item upon which a tax is required to be paid, in

Texas, every retailer shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a retailer to be obtained. The said bond shall be signed by the said retailer and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and in an amount to be prescribed by the Comptroller but in no event shall said bond be less than One Hundred Dollars (\$100). The said bond shall be payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the retailer of all the conditions and requirements imposed upon him by this Article, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller expressly providing for the performance of said obligations, and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, all taxes due upon the use of items taxable under this Article by said retailer, and all costs, penalties, and interest provided in this Article, provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any fiscal year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit, and provided further, that the said renewal certificates, as, if and when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. The amount of any bond required of any retailer shall be fixed by the Comptroller and additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the retailer may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than two (2) times the highest tax said retailer has collected and paid to the State for any month dur-

ing preceding six (6) months, but which shall never be less than the minimum aforesaid.

Provided that whenever any person imports for his own use in Texas, any item taxable under this Article and pays the tax to the State of Texas forthwith and before said item is used in Texas, the Comptroller may waive the requirement for furnishing bond and obtaining a permit to use said item in Texas.

(b) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution of any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Should any retailer fail or refuse to supply a new or additional bond within ten (10) days after demand, said retailer's permit shall be cancelled by the Comptroller.

(c) Any surety on any bond furnished by any retailer as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on the receipt of notice of such request notify the retailer who furnished such bond, and unless such retailer shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Article provided, the Comptroller shall proceed to cancel the permit of said retailer in the manner herein provided. If such new bond shall be furnished by said retailer as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(d) In lieu of giving a bond, any retailer may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until a bond is executed in lieu thereof, or until the Comptroller has made an audit of the retailer's records and authorized the same released. Provided further, that suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of said retailer, or without making said retailer, as principal obligor in said bond, a party to said suit.

Sec. 8a. The permit and bond required under Section 7 and 8 of this Article shall not be required from any retailer, as that term is defined herein, who pays a store tax to this State, and who indicates to the Comptroller at the time of the payment of his store tax that he sells items taxed under this Article.

Sec. 9. Amount of Taxes, Penalties, Interest and Costs to Constitute Preferred Lien.

All taxes, penalties, interest and costs due by any retailer under the provisions of this Article and all taxes collected and required to be paid by said retailer to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the personal property of any retailer, devoted to or used in his business as a retailer, which property shall include equipment, inventories on hand of every kind and character whatsoever used or usable in such business, including cash on hand and in bank, accounts and notes receivable, and any and all other personal property of every kind and character whatsoever or wherever situated devoted to such use.

Sec. 10. Retention of Records.

Every retailer shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete record of all purchases and sales of items taxable under this Article, and his records shall show the date of receipt, the name and address of the person from whom purchased, to whom sale was made, the means of

delivery, and the quantity in units and value of all such items taxable under this Article. Also it shall show all sales of the same as and when made from stocks on hand, or direct from the manufacturer.

Sec. 11. Investigations by Comptroller Authorized.

For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where any items taxable under this Article are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept and any and all books and records that may be kept incident to the conduct of the business of said retailer, user, distributor or other person, dealing in or possessing any items taxable under this Article. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

Sec. 12. Cancellation of Permits.

(a) The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any retailer's permit as provided under the terms of this Article to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller or any of the provisions of this Article, including any of the following offenses, which may be applicable to such permittee: (1) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller from any report filed with said Comptroller or from any books or reports required to be kept or any books or records authorized to be audited by the provisions of this Article; (2) failure to file any return or report required under the provisions of this Article; (3) the making and filing with the Com-

troller any false or incomplete return or report required under the provisions of this Article; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (6) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (7) the engaging in any business requiring a permit under the provisions of this Article, without obtaining and possessing a valid permit.

(b) Before any permit may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or applicant therefor not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules and procedure and evidence for such hearings.

(c) If, after said hearing or opportunity to be heard, the permit is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State, except by the provisions of this Section, shall become due and payable concurrently with the cancellation of such permit and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports filed by said permittee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued from the sale, use or distribution of items taxable

under this Article in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit.

(d) An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) all cases shall be tried within thirty (30) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the court pending a trial on the merits.

Sec. 13. Certification of Records and Documents.

(a) If any retailer fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Article, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such retailer or his representative, or a certified copy thereof certified to by the Comptroller or Chief Clerk, showing the amount of sales of items taxable under this Article by such retailer or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State or any audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said retailer, when signed and sworn to by such representative as being made from said books and records of said retailer or from any books or records of any person from whom such retailer has bought, received, delivered or sold items taxable under

this Article, or from the books and records of any transportation agency, who has transported any of said items, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said report or audit may be overcome, upon trial, by evidence adduced by said retailer.

(b) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond or other instrument, referred to in this Article, and that the same had been adopted, promulgated and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts and such certificates shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption or publication, and without further proof of its contents and the same provision shall apply to any bond or other instrument referred to herein.

Sec. 14. Penalties.

(a) If any person affected by this Article (1) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Article, or (2) shall fail to keep for the period of time provided herein any books or records required to be kept, or (3) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (4) shall refuse to permit the Comptroller, the Attorney General, or their authorized representatives to inspect and examine any books or records, incident to the conduct of his business that may be kept, or (5) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or (6) shall refuse to permit the Comptroller, or his authorized representatives, to inspect any premises where items taxable under this Article are produced, made, assembled, stored, transported, sold, or offered for sale or exchange, or (7) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed or (8) shall fail or refuse to comply with any provision of this Article

or shall violate the same, or (9) shall fail to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any retailer does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said retailer, within the time herein prescribed, said retailer shall forfeit to the State ten per cent (10%) of the amount due. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

(b) The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Article, shall be in a court of competent jurisdiction, in Travis County, Texas, or in any other court having venue under existing venue Statutes.

Sec. 15. Allocation of Revenues.

All the revenues derived from the taxes and fees imposed by this Article shall be placed in the General Revenue Fund of this State.

Sec. 16. Additional Penalties.

(a) Whoever shall make a retail sale, distribution, or use of any item taxable under this Article upon which a tax is required to be paid without then and there holding a valid retailer's permit issued by the Comptroller, or (b) whoever as a retailer shall fail or refuse to make and deliver to the Comptroller a report containing the information required to be made and delivered to said Comptroller, or (c) whoever shall knowingly make and deliver to said Comptroller any false or incomplete report required to be made and delivered to the Comptroller by a retailer, or (d) whoever as a retailer shall fail or refuse to keep in Texas for the period of time

required any books and records required to be kept by a retailer, or (e) whoever shall knowingly make any false entry or shall willfully fail to make entry in any books and records required to be kept by a retailer, shall be guilty of a misdemeanor and upon conviction, shall be punished by confinement in the county jail for not less than one (1) month nor more than one (1) year or by a fine of not less than One Hundred Dollars (\$100), or more than Five Thousand Dollars (\$5,000) or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a misdemeanor conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a retailer of any item taxable under this Article for a period of six (6) months from the date of such conviction.

Any person who shall violate, fail or refuse to comply with any provision of this Article for which no penalty is provided elsewhere herein, or shall violate, or fail or refuse to comply with any rule or regulation duly promulgated by the Comptroller, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

ARTICLE X

BOAT AND BOAT MOTORS TAX

Section 1. Definitions.

As used in this Article the following words shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Person" shall mean and include any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, any agency, institution or instrumentality of the United States, this State, any agency, institution, political subdivision or instrumentality of this State, or any other group or combination acting as a unit.

(b) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Retailer" shall mean and include every person in this State who

manufactures, produces, or in any other manner acquires or possesses any of the items taxable under this Article for the purpose of making a resale, distribution, or use of the same in this State to the user; and it shall also include every person in this State who ships, transports or imports into this State any item taxable under this Article and makes the first distribution of, use by, or sale to the user of same in this State.

(d) "Distributor" shall mean and include every person other than a retailer who engages in the business of distributing or selling any item taxable under this Article within this State. If any distributor shall sell, use or distribute any item taxable under this Article to any person not holding a valid permit as required by this Article, said distributor shall qualify as a retailer and be liable for and shall be required to pay over to the State, at the time and in the manner herein provided for a retailer, the tax due on the item taxable under this Article.

(e) "Boat" shall mean any and every type of watercraft, other than a seaplane on water, used or capable of being used as transportation on water.

(f) "Boat Motor" shall mean any and every type of motor or marine engine, permanently mounted or detachable, which is used or capable of being used as a means of propelling any boat or watercraft.

(g) "Retail Sale" shall mean any transfer, exchange or barter of any item taxable under this Article, conditional or otherwise, in any manner or by any means whatsoever, to the user and shall include conditional sales, installment lease sales, and any other transfer of an item taxable under this Article in which the title is retained as security for payment of the purchase price and is intended to be transferred later. It shall also mean the first sale or distribution in this State to the user of any item taxable under this Article which has been imported or brought into the State, or which has been manufactured, constructed, produced, or assembled in Texas, or acquired in any manner without the tax having been previously paid thereon in Texas.

(h) "Distribution" shall mean and include any transaction other than a retail sale in which ownership or title

to any item taxable under this Article is passed to a user.

(i) "Use" shall mean the keeping or retention in this State of any item taxable under this Article by the user, or the exercise of any right or power over any such item incident to the ownership thereof. The term "use" shall not include the storing, keeping, or retention of items taxable under this Article in any place of business where such items are sold, or offered for sale, or demonstrated for sale in the regular course of business conducted at such places, nor shall the said term include items taxable under this Article which are crated and stored in Texas for sale and delivery outside the State of Texas.

(j) "Retail Sale Price" shall mean the actual price, valued in money, paid or required to be paid, as a consideration in the purchase or acquisition of any item taxable under this Article by the user, and without any deductions being made therefrom on account of cost of materials, labor, transportation charges, or any expenses whatsoever, including allowance for any trade-ins.

(k) "User" shall mean and include every person who purchases, uses or acquires in any other manner any item taxable under this Article for his own use in Texas and who does not purchase or acquire same for the purpose of resale.

(l) "State, This State" shall mean the State of Texas.

(m) "In This State, Within This State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

Sec. 2. Boat and Boat Motor Excise Tax Imposed.

There is hereby levied and shall be imposed upon the sale, distribution, or use in this State of boats and boat motors an excise tax equivalent to three per cent (3%) of the retail price for which such boats and boat motors are sold.

From and after the effective date of this Article every person who imports or in any manner acquires for use in this State any boat and/or boat motor upon which the said tax has not theretofore been paid to the State of Texas shall, for the purposes of this Article be considered as a retailer and shall report and pay said tax equal to three per cent (3%) of the retail

price thereof to the State of Texas at the time and in the manner herein-after provided.

It is expressly provided, however, that the tax imposed in this Article shall not apply to any boat or boat motor used or intended to be used in commercial pursuits.

Sec. 3. Method of Imposition, Fiduciary Relationship Established, Legislative Intent, Taxes to be in Lieu of Any Other Excise Taxes on Items Taxed under This Article.

(a) Every retailer who makes a sale or distribution of an item taxable under this Article in Texas to the user shall add the amount of said tax to the selling price of such item which said tax shall be collected from the purchaser or recipient of such item at the time of such sale or distribution, and said tax shall be reported and paid to the State of Texas as herein-after provided.

(b) It is the intent of this Article that the tax imposed herein shall constitute an excise tax imposed on the persons using items taxable under this Article and the granting of a permit to retailers to collect such taxes for and in behalf of the State of Texas, shall be deemed to establish a fiduciary relationship.

(c) In the event any tax imposed upon the sale, distribution, or use of any item taxable under this Article is in conflict with the Constitution or laws of the United States or the Constitution of Texas, then it is hereby declared to be the intention of this Article to impose such tax on the first subsequent sale, distribution, or use of such item which may be subject to being taxed.

(d) The excise tax imposed under this Article shall be in lieu of any other excise tax imposed by the State of Texas or any political subdivision or instrumentality thereof, upon the items taxable under this Article.

Sec. 4. Promulgation of Rules and Regulations by Comptroller.

The Comptroller is hereby vested with power and authority to promulgate rules and regulations, not inconsistent with this Article, for the enforcement of the provisions of this Article and the collection of the revenues levied hereunder.

Sec. 5. Payment of Tax, Reports Required.

(a) Every retailer who shall be re-

quired to collect any of the taxes imposed by this Article upon the sale or distribution of any of the items taxable under this Article in this State, or who shall be required to pay the tax levied herein upon any item taxable under this Article used by said retailer, shall on or before the tenth (10th) day of each month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, ninety-nine per cent (99%) of the amount of tax or taxes required to be collected during the calendar month immediately preceding, and one hundred per cent (100%) of the amount of tax or taxes required to be paid for items taxable under this Article which are used by said retailer during said period. Provided, however, that this discount shall be allowed only when a retailer files the report and pays the amount of tax due within the time specified for such report and payment, and provided further, that the maximum amount of money allowed to be retained by any retailer under this discount provision shall not exceed One Thousand Dollars (\$1,000) in any one (1) month. At the time of payment of the tax or taxes due, each retailer shall also make and deliver to the Comptroller at his office in Austin, Travis County, Texas a report properly sworn to and executed by such retailer, or his representative in charge, which shall show the date such report was executed, the name and address of said retailer and the month which the report covers, and shall show separately by units and value in money the items taxable under this Article on hand at the beginning and end of the month and complete information on all taxable items handled during the month including: value of taxable items received in interstate commerce, value of items purchased or received in intrastate commerce, reflecting separately the number of taxable items and value thereof received with the tax paid and the number of taxable items and value thereof received without the tax having been paid; the number of taxable items and value thereof manufactured or assembled in Texas; the number of taxable items and value thereof sold in interstate commerce; the number of taxable items and value thereof returned to the manufacturer; the number of taxable units and value there-

of lost by fire or other accident; the number of taxable items and value thereof used for taxable purposes by the retailer and his representatives, and shall include gross value of all retail sales of all items taxable under this Article. Provided that where a retailer has not sold, distributed, or used any taxable items during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any retailer to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every retailer, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in amount of tax for the period covered by the report.

(b) If any retailer shall fail to remit proper taxes collected upon the sale or distribution of any item taxable under this Article, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the retailer shall pay as additional penalty any reasonable expenses incurred by the Comptroller in such audit.

Sec. 6. Penalties for Failure to Pay or Misappropriation of Taxes Imposed.

(a) All taxes collected hereunder by any retailer, or by any director, officer, agent, employee, trustee, receiver of such retailer, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Article.

(b) If any such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or any person shall willfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Article, on or before the date such payment is due as provided by this Article, such retailer or such director, officer, agent, employee, trustee, receiver of such

retailer, or such person shall be guilty of a felony and shall be punished by confinement in the state penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.

(c) If any director, officer, agent, employee, trustee, receiver of any retailer, or any person shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Article by such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such retailer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Article, such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the state penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month, nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. Venue of prosecution under this Section shall be in Travis County, Texas, or in the County in which the offense occurs.

Sec. 7. Permits Required.

(a) From and after the effective date of this Article, all retailers of items taxable under this Article in this State now engaged or who desires to become engaged in the sale, use or distribution of items taxable under this Article, shall file a duly acknowledged application for a retailer's permit, which shall be non-assignable, with the Comptroller, said application to be accompanied by a fee of Five Dollars (\$5). Said applications to be on a form prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an abso-

lute refusal is shown. An application shall be filed and a permit obtained for each place of business owned or operated by a retailer. Said form shall set forth the name under which such retailer transacts or intends to transact such business as retailer, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office address. The Comptroller may require in said application such other information as he may desire. No retailer shall make a sale, use, or distribution of any item taxable under this Article until such application has been filed and a permit has been obtained.

(b) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every retailer a nonassignable, consecutively numbered permit authorizing the sale, use, or distribution of items taxable under this Article in this State from the date of the issuance of said permit, until and including the following August 31st. On or before September 1st of each year, and before any retailer shall make a sale, use, or distribution of items taxable under this Article or engage in selling items taxable under this Article in this State after August 31st, an application shall be filed and a permit obtained for the fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Article, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said retailer shall not sell, use or distribute items upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this Article.

Sec. 8. Bond Required.

(a) Before any permit shall be issued and before engaging in the sale, use or distribution of any item upon which a tax is required to be paid, in

Texas, every retailer shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a retailer to be obtained. The said bond shall be signed by the said retailer and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and in an amount to be prescribed by the Comptroller but in no event shall said bond be less than One Hundred Dollars (\$100). The said bond shall be payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the retailer of all the conditions and requirements imposed upon him by this Article, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller expressly providing for the performance of said obligations, and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, all taxes due upon the use of items taxable under this Article by said retailer, and all costs, penalties, and interest provided in this Article, provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any fiscal year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit, and provided further, that the said renewal certificates, as, if and when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. The amount of any bond required of any retailer shall be fixed by the Comptroller and additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the retailer may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than two (2) times the highest tax said retailer has collected and paid to the

State for any month during the preceding six (6) months, but which shall never be less than the minimum aforesaid.

Provided that whenever any person imports for his own use in Texas, any item taxable under this Article and pays the tax to the State of Texas forthwith and before said item is used in Texas, the Comptroller may waive the requirement for furnishing bond and obtaining a permit to use said item in Texas.

(b) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution of any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Should any retailer fail or refuse to supply a new or additional bond within ten (10) days after demand, said retailer's permit shall be cancelled by the Comptroller.

(c) Any surety on any bond furnished by any retailer as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on the receipt of notice of such request notify the retailer who furnished such bond, and unless such retailer shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Article provided, the Comptroller shall proceed to cancel the permit of said retailer in the manner herein provided. If such new bond shall be furnished by said retailer as above provided, the Comp-

troller shall cancel and surrender the bond for which such new bond is substituted.

(d) In lieu of giving a bond, any retailer may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until a bond is executed in lieu thereof, or until the Comptroller has made an audit of the retailer's records and authorized the same released. Provided further, that suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of said retailer, or without making said retailer, as principal obligor in said bond, a party to said suit.

Sec. 9. Amount of Taxes, Penalties, Interest and Costs to Constitute Preferred Lien.

All taxes, penalties, interest and costs due by any retailer under the provisions of this Article and all taxes collected and required to be paid by said retailer to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the personal property of any retailer, devoted to or used in his business as a retailer, which property shall include equipment, inventories on hand of every kind and character whatsoever used or usable in such business, including cash on hand and in bank, accounts and notes receivable, and any and all other personal property of every kind and character whatsoever or wherever situated devoted to such use.

Sec. 10. Retention of Records.

Every retailer shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete record of all purchases and sales of items taxable under this Article, and his records shall show the date of receipt, the name and address of the person from whom purchased, to whom sale was made, the means of delivery, and the quantity in units and value of all such items taxable under this Article. Also it shall show all sales of the same as and when made from stocks on hand, or direct from the manufacturer.

Sec. 11. Investigations by Comptroller Authorized.

For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where any items taxable under this Article are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept and any and all books and records that may be kept incident to the conduct of the business of said retailer, user, distributor or other person, dealing in or possessing any items taxable under this Article. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

Sec. 12. Cancellation of Permits.

(a) The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any retailer's permit as provided under the terms of this Article to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller or any of the provisions of this Article, including any of the following offenses, which may be applicable to such permittee: (1) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller from any report filed with said Comptroller or from any books or reports required to be kept or any books or records authorized to be audited by the provisions of this Article; (2) failure to file any return or report required under the provisions of this Article; (3) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Article; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) the falsifying, destroying, mutilating, removing from

the State, or secreting any such books and records; (6) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (7) the engaging in any business requiring a permit under the provisions of this Article, without obtaining and possessing a valid permit.

(b) Before any permit may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or applicant therefor not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules and procedure and evidence for such hearings.

(c) If, after said hearing or opportunity to be heard, the permit is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State, except by the provisions of this Section, shall become due and payable concurrently with the cancellation of such permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports filed by said permittee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes which have been collected and which have accrued from the sale, use or distribution of items taxable under this Article in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit.

(d) An appeal from any order of

the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) all cases shall be tried within thirty (30) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the court pending a trial on the merits.

Sec. 13. Certification of Records and Documents.

(a) If any retailer fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Article, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such retailer or his representative, or a certified copy thereof certified to by the Comptroller or Chief Clerk, showing the amount of sales of items taxable under this Article by such retailer or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State or any audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said retailer, when signed and sworn to by such representative as being made from said books and records of said retailer or from any books or records of any person from whom such retailer has bought, received, delivered or sold items taxable under this Article, or from the books and records of any transportation agency, who has transported any of said items, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, how-

ever, that the prima facie presumption of the correctness of said report or audit may be overcome, upon trial, by evidence adduced by said retailer.

(b) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond or other instrument, referred to in this Article, and that the same has been adopted, promulgated and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts and such certificates shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption or publication, and without further proof of its contents and the same provision shall apply to any bond or other instrument referred to herein.

Sec. 14. Penalties.

(a) If any person affected by this Article (1) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Article, or (2) shall fail to keep for the period of time provided herein any books or records required to be kept, or (3) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (4) shall refuse to permit the Comptroller, the Attorney General, or their authorized representative to inspect and examine any books or records, incident to the conduct of his business that may be kept, or (5) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or (6) shall refuse to permit the Comptroller, or his authorized representatives, to inspect any premises where items taxable under this Article are produced, made, assembled, stored, transported, sold, or offered for sale or exchange, or (7) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed, or (8) shall fail or refuse to comply with any provision of this Article or shall violate the same, or (9) shall fail to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall for-

feit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any retailer does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said retailer, within the time herein prescribed, said retailer shall forfeit to the State ten per cent (10%) of the amount due. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

(b) The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Article, shall be in a court of competent jurisdiction, in Travis County, Texas, or in any other court having venue under existing venue Statutes.

Sec. 15. Allocation of Revenues.

All the revenues derived from the taxes and fees imposed by this Article shall be placed in the General Revenue Fund of this State.

Sec. 16. Additional Penalties.

(a) Whoever shall make a retail sale, distribution, or use of any item taxable under this Article upon which a tax is required to be paid without then and there holding a valid retailer's permit issued by the Comptroller, or (b) whoever as a retailer shall fail or refuse to make and deliver to the Comptroller a report containing the information required to be made and delivered to said Comptroller, or (c) whoever shall knowingly make and deliver to said Comptroller any false or incomplete report required to be made and delivered to the Comptroller by a retailer, or (d) whoever as a retailer shall fail or refuse to keep in Texas for the period of time required any books and records required to be kept by a retailer, or (e) whoever shall knowingly make

any false entry or shall willfully fail to make entry in any books and records required to be kept by a retailer, shall be guilty of a misdemeanor and upon conviction, shall be punished by confinement in the county jail for not less than one (1) month nor more than one (1) year or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000) or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a misdemeanor conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a retailer of any item taxable under this Article for a period of six (6) months from the date of such conviction.

Any person who shall violate, fail or refuse to comply with any provision of this Article for which no penalty is provided elsewhere herein, or shall violate, or fail or refuse to comply with any rule or regulation duly promulgated by the Comptroller shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

ARTICLE XI

AIR CONDITIONER TAX

Section 1. Definitions.

As used in this Article the following words shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Person" shall mean and include any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, any agency, institution or instrumentality of the United States, this State, any agency, institution, political subdivision or instrumentality of this State, or any other group or combination acting as a unit.

(b) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Retailer" shall mean and include every person in this State who manufactures, produces, or in any other manner acquires or possesses any of the items taxable under this

Article for the purpose of making a resale, distribution or use of the same in this State to the user; and it shall also include every person in this State who ships, transports, or imports into this State any item taxable under this Article and makes the first distribution of, use by, or sale to the user of same in this State.

(d) "Distributor" shall mean and include every person other than a retailer who engages in the business of distributing or selling any item taxable under this Article within this State. If any distributor shall sell, use or distribute any item taxable under this Article to any person not holding a valid permit as required by this Article, said distributor shall qualify as a retailer and be liable for and shall be required to pay over to the State, at the time and in the manner herein provided for a retailer, the tax due on the item taxable under this Article.

(e) "Air Conditioner" shall mean any apparatus or device commonly known, sold and used as an air conditioner and shall include any instrument, apparatus, or mechanical contrivance designed, constructed or assembled to cool or heat or assist in the cooling or heating of air in any manner. The term air conditioner shall also include all subassemblies, devices or instruments commonly used in conjunction with any other apparatus, device, subassembly or instrument, which when combined or connected as a functioning unit will constitute an air conditioner. The term air conditioner, however, shall not include a buzz fan or any other apparatus, device or system designed and used only to circulate or move air, including evaporative coolers, except when the same is a functioning part of a larger unit defined herein as an air conditioner.

(f) "Retail Sale" shall mean any transfer, exchange or barter of any item taxable under this Article, conditional or otherwise, in any manner or by any means whatsoever, to the user and shall include conditional sales, installment lease sales, and any other transfer of an item taxable under this Article in which the title is retained as security for payment of the purchase price and is intended to be transferred later. It shall also mean the first sale or distribution in this State to the user of any item taxable under this Article which has been

imported or brought into the State, or which has been manufacturer, constructed, produced, or assembled in Texas, or acquired in any manner without the tax having been previously paid thereon in Texas.

(g) "Distribution" shall mean and include any transaction other than a retail sale in which ownership or title to any item taxable under this Article is passed to a user.

(h) "Use" shall mean the keeping or retention in this State of any item taxable under this Article by the user, or the exercise of any right or power over any such item incident to the ownership thereof. The term "use" shall not include the storing, keeping, or retention of items taxable under this Article in any place of business where such items are sold, or offered for sale, or demonstrated for sale in the regular course of business conducted at such places, nor shall the said term include items taxable under this Article which are crated and stored in Texas for sale and delivery outside the State of Texas.

(i) "Retail Sale Price" shall mean the actual price, valued in money, paid or required to be paid, as a consideration in the purchase or acquisition of any item taxable under this Article by the user, and without any deductions being made therefrom on account of cost of materials, labor, transportation charges, or any expenses whatsoever, including allowance for any trade-ins.

(j) "User" shall mean and include every person who purchases, uses or acquires in any other manner any item taxable under this Article for his own use in Texas and who does not purchase or acquire same for the purpose of resale.

(k) "State, This State" shall mean the State of Texas.

(l) "In This State, Within This State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

Sec. 2. Air Conditioner Excise Tax Imposed.

There is hereby levied and shall be imposed upon the sale, distribution or use of air conditioners in this State an excise tax equivalent to three per cent (3%) of the retail price for which such air conditioners are sold.

From and after the effective date of this Article every person who imports or in any other manner acquires for use in this State any air conditioner upon which said tax has not theretofore been paid to the State of Texas shall, for the purposes of this Article, be considered as a retailer and shall report and pay said tax equal to three per cent (3%) of the retail price thereof to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed in this Article shall not apply to air conditioners installed in new motor vehicles upon which a tax imposed by Chapter 184, Article VI, Acts of the Forty-seventh Legislature, Regular Session, as amended, compiled as Article 7047k, Vernon's Annotated Civil Statutes of Texas, has been paid or is required to be paid.

Sec. 3. Method of Imposition, Fiduciary Relationship Established, Legislative Intent, Taxes to be in Lieu of Any Other Excise Taxes on Items Taxed under This Article.

(a) Every retailer who makes a sale or distribution of an item taxable under this Article in Texas to the user shall add the amount of said tax to the selling price of such item which said tax shall be collected from the purchaser or recipient of such item at the time of such sale or distribution, and said tax shall be reported and paid to the State of Texas as hereinafter provided.

(b) It is the intent of this Article that the tax imposed herein shall constitute an excise tax imposed on the persons using items taxable under this Article and the granting of a permit to retailers to collect such taxes for and in behalf of the State of Texas, shall be deemed to establish a fiduciary relationship.

(c) In the event any tax imposed upon the sale, distribution, or use of any item taxable under this Article is in conflict with the Constitution or laws of the United States or the Constitution of Texas, then it is hereby declared to be the intention of this Article to impose such tax on the first subsequent sale, distribution, or use of such item which may be subject to being taxed.

(d) The excise tax imposed under this Article shall be in lieu of any other excise tax imposed by the State

of Texas or any political subdivision or instrumentality thereof, upon the items taxable under this Article.

Sec. 4. Promulgation of Rules and Regulations by Comptroller.

The Comptroller is hereby vested with power and authority to promulgate rules and regulations, not inconsistent with this Article, for the enforcement of the provisions of this Article and the collection of the revenues levied hereunder.

Sec. 5. Payment of Tax, Reports Required.

(a) Every retailer who shall be required to collect any of the taxes imposed by this Article upon the sale or distribution of any of the items taxable under this Article in this State, or who shall be required to pay the tax levied herein upon any item taxable under this Article used by said retailer, shall on or before the tenth day of each month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, ninety-nine per cent (99%) of the amount of tax or taxes required to be collected during the calendar month immediately preceding, and one hundred per cent (100%) of the amount of tax or taxes required to be paid for items taxable under this Article which are used by said retailer during said period. Provided, however, that this discount shall be allowed only when a retailer files the report and pays the amount of tax due within the time specified for such report and payment, and provided further, that the maximum amount of money allowed to be retained by any retailer under this discount provision shall not exceed One Thousand Dollars (\$1,000) in any one (1) month. At the time of payment of the tax or taxes due, each retailer shall also make and deliver to the Comptroller at his office in Austin, Travis County, Texas a report properly sworn to and executed by such retailer, or his representative in charge, which shall show the date such report was executed, the name and address of said retailer and the month which the report covers, and shall show separately by units and value in money the items taxable under this Article on hand at the beginning and end of the month and complete information on all taxable items handled during the month including: value of taxable items received in interstate com-

merce, value of items purchased or received in intrastate commerce, reflecting separately the number of taxable items and value thereof received with the tax paid and the number of taxable items and value thereof received without the tax having been paid; the number of taxable items and value thereof manufactured or assembled in Texas; the number of taxable items and value thereof sold in interstate commerce; the number of taxable items and value thereof returned to the manufacturers; the number of taxable units and value thereof lost by fire or other accident; the number of taxable items and value thereof used for taxable purposes by the retailer and his representative, and shall include gross value of all retail sales of all items taxable under this Article. Provided that where a retailer has not sold, distributed, or used any taxable items during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any retailer to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every retailer, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in amount of tax for the period covered by the report.

(b) If any retailer shall fail to remit proper taxes collected upon the sale or distribution of any item taxable under this Article, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the retailer shall pay as additional penalty any reasonable expenses incurred by the Comptroller in such audit.

Sec. 6. Penalties for Failure to Pay or Misappropriation of Taxes Imposed.

(a) All taxes collected hereunder by any retailer, or by any director, officer, agent, employee, trustee, receiver of such retailer, or by any per-

son, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Article.

(b) If any such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or any person shall willfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Article, on or before the date such payment is due as provided by this Article, such retailer or such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and shall be punished by confinement in the State penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.

(c) If any director, officer, agent, employee, trustee, receiver of any retailer, or any person shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Article by such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such retailer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Article, such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the state penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month, nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. Venue of prosecution under this Section shall be in Travis County, Texas, or in the county in which the offense occurs.

Sec. 7. Permits Required.

(a) From and after the effective date of this Article, all retailers of

items taxable under this Article in this State now engaged or who desire to become engaged in the sale, use or distribution of items taxable under this Article, shall file a duly acknowledged application for a retailer's permit, which shall be nonassignable, with the Comptroller, said application to be accompanied by a fee of Five Dollars (\$5). Said applications, to be on a form prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. An application shall be filed and a permit obtained for each place of business owned or operated by a retailer. Said form shall set forth the name under which such retailer transacts or intends to transact such business as retailer, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office address. The Comptroller may require in said application such other information as he may desire. No retailer shall make a sale, use, or distribution of any item taxable under this Article until such application has been filed and a permit has been obtained.

(b) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every retailer a nonassignable, consecutively numbered permit authorizing the sale, use, or distribution of items taxable under this Article in this State from the date of the issuance of said permit, until and including the following August 31st. On or before September 1st of each year, and before any retailer shall make a sale, use, or distribution of items taxable under this Article or engage in selling items taxable under this Article in this State after August 31st, an application shall be filed and a permit obtained for the fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Article, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said retailer shall not sell, use or distribute items upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no

permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this Article.

Sec. 8. Bond Required.

(a) Before any permit shall be issued and before engaging in the sale, use or distribution of any item upon which a tax is required to be paid, in Texas, every retailer shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a retailer to be obtained. The said bond shall be signed by the said retailer and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and in an amount to be prescribed by the Comptroller but in no event shall said bond be less than One Hundred Dollars (\$100). The said bond shall be payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the retailer of all the conditions and requirements imposed upon him by this Article, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller expressly providing for the performance of said obligations, and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, all taxes due upon the use of items taxable under this Article by said retailer, and all costs, penalties, and interest provided in this Article, provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any fiscal year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit, and provided further, that the said renewal certificates, as, if and when issued, shall have all the force and effect of the original bond for

the fiscal year for which said renewal certificate is issued. The amount of any bond required of any retailer shall be fixed by the Comptroller and additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the retailer may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than two (2) times the highest tax said retailer has collected and paid to the State for any month during preceding six (6) months, but which shall never be less than the minimum aforesaid.

Provided that whenever any person imports for his own use in Texas, any item taxable under this Article and pays the tax to the State of Texas forthwith and before said item is used in Texas, the Comptroller may waive the requirement for furnishing bond and obtaining a permit to use said item in Texas.

(b) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution of any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Should any retailer fail or refuse to supply a new or additional bond within ten (10) days after demand, said retailer's permit shall be cancelled by the Comptroller.

(c) Any surety on any bond furnished by any retailer as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on the receipt of notice of such request notify

the retailer who furnished such bond, and unless such retailer shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Article provided, the Comptroller shall proceed to cancel the permit of said retailer in the manner herein provided. If such new bond shall be furnished by said retailer as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(d) In lieu of giving a bond, any retailer may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until a bond is executed in lieu thereof, or until the Comptroller has made an audit of the retailer's records and authorized the same released. Provided further, that suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of said retailer, or without making said retailer, as principal obligor in said bond, a party to said suit.

Sec. 9. Amount of Taxes, Penalties, Interest and Costs to Constitute Preferred Lien.

All taxes, penalties, interest and costs due by any retailer under the provisions of this Article and all taxes collected and required to be paid by said retailer to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contrary or statutory, legal or equitable, and regardless of the time such liens originated, upon all the personal property of any retailer, devoted to or used in his business as a retailer, which property shall include equipment, inventories on hand of every kind and character whatsoever used or usable in such business, including cash on hand and in bank, accounts and notes receivable, and any and all other personal property of every kind and character whatsoever or wherever situated devoted to such use.

Sec. 10. Retention of Records.

Every retailer shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete record of all purchases and

sales of items taxable under this Article, and his records shall show the date of receipt, the name and address of the person from whom purchased, to whom sale was made, the means of delivery, and the quantity in units and value of all such items taxable under this Article. Also it shall show all sales of the same as and when made from stocks on hand, or direct from the manufacturer.

Sec. 11. Investigations by Comptroller Authorized.

For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where any items taxable under this Article are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept and any and all books and records that may be kept incident to the conduct of the business of said retailer, user, distributor or other person, dealing in or possessing any items taxable under this Article. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

Sec. 12. Cancellation of Permits.

(a) The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any retailer's permit as provided under the terms of this Article to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller or any of the provisions of this Article, including any of the following offenses, which may be applicable to such permittee: (1) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller from any report filed with said Comptroller or from any books or reports required to be kept or any books or records

authorized to be audited by the provisions of this Article; (2) failure to file any return or report required under the provisions of this Article; (3) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Article; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (6) refusal to permit the Comptroller, Attorney General, or their authorized representatives to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (7) the engaging in any business requiring a permit under the provisions of this Article, without obtaining and possessing a valid permit.

(b) Before any permit may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or applicant therefor not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules and procedure and evidence for such hearings.

(c) If, after said hearing or opportunity to be heard, the permit is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State, except by the provisions of this Section, shall become due and payable concurrently with the cancellation of such permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports filed by said permittee, and ending with

the date of cancellation and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued from the sale, use or distribution of items taxable under this Article in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit.

(d) An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) all cases shall be tried within thirty (30) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the court pending a trial on the merits.

Sec. 13. Certification of Records and Documents.

(a) If any retailer fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Article, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such retailer or his representative, or a certified copy thereof certified to by the Comptroller or Chief Clerk, showing the amount of sales of items taxable under this Article by such retailer or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State or any audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said retailer, when signed and sworn to by such representative as being made from

said books and records of said retailer or from any books or records of any person from whom such retailer has bought, received, delivered or sold items taxable under this Article, or from the books and records of any transportation agency, who has transported any of said items, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said report or audit may be overcome, upon trial, by evidence adduced by said retailer.

(b) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond or other instrument, referred to in this Article, and that the same had been adopted, promulgated and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificates, shall be prima facie evidence of all such facts and such certificates shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption or publication, and without further proof of its contents and the same provision shall apply to any bond or other instrument referred to herein.

Sec. 14. Penalties.

(a) If any person affected by this Article (1) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Article, or (2) shall fail to keep for the period of time provided herein any books or records required to be kept, or (3) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (4) shall refuse to permit the Comptroller, the Attorney General, or their authorized representative to inspect and examine any books or records, incident to the conduct of his business that may be kept, or (5) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or (6) shall refuse to permit the Comptroller, or his authorized representatives, to inspect any premises where items taxable under this Article are produced, made, assembled, stored, transported,

sold, or offered for sale or exchange, or (7) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed or (8) shall fail or refuse to comply with any provision of this Article or shall violate the same, or (9) shall fail to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any retailer does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said retailer, within the time herein prescribed, said retailer shall forfeit to the State ten per cent (10%) of the amount due. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

(b) The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Article, shall be in a court of competent jurisdiction, in Travis County, Texas, or in any other court having venue under existing venue Statutes.

Sec. 15. Allocation of Revenues.

All the revenues derived from the taxes and fees imposed by this Article shall be placed in the General Revenue Fund of this State.

Sec. 16. Additional Penalties.

(a) Whoever shall make a retail sale, distribution, or use of any item taxable under this Article upon which a tax is required to be paid without then and there holding a valid retailer's permit issued by the Comptroller, or (b) whoever as a retailer shall fail or refuse to make and deliver to the Comptroller a report containing the information required to be made and delivered to said Comptroller, or (c)

whoever shall knowingly make and deliver to said Comptroller any false or incomplete report required to be made and delivered to the Comptroller by a retailer, or (d) whoever as a retailer shall fail or refuse to keep in Texas for the period of time required any books and records required to be kept by a retailer, or (e) whoever shall knowingly make any false entry or shall willfully fail to make entry in any books and records required to be kept by a retailer, shall be guilty of a misdemeanor and upon conviction, shall be punished by confinement in the county jail for not less than one (1) month nor more than one (1) year or by a fine of not less than One Hundred Dollars (\$100), or more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a misdemeanor conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a retailer of any item taxable under this Article for a period of six (6) months from the date of such conviction.

Any person who shall violate, fail or refuse to comply with any provision of this Article for which no penalty is provided elsewhere herein, or shall violate, or fail or refuse to comply with any rule or regulation duly promulgated by the Comptroller, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

ARTICLE XII

RADIO, TELEVISION, PHONO- GRAPH AND COMPONENT PART TAX

Section 1. Definitions.

As used in this Article the following words shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Person" shall mean and include any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustees, trustee in bankruptcy, syndicate, the United States, any agency, institution or instrumentality of the United States, this State, any agency, institution, political sub-

division or instrumentality of this State, or any other group or combination acting as a unit.

(b) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Retailer" shall mean and include every person in this State who manufactures, produces, or in any other manner acquires or possesses any of the items taxable under this Article for the purpose of making a resale, distribution, or use of the same in this State to the user; and it shall also include every person in this State who ships, transports or imports into this State any item taxable under this Article and makes the first distribution of, use by, or sale to the user of same in this State.

(d) "Distributor" shall mean and include every person other than a retailer who engages in the business of distributing or selling any item taxable under this Article within this State. If any distributor shall sell, use or distribute any item taxable under this Article to any person not holding a valid permit as required by this Article, said distributor shall qualify as a retailer and be liable for and shall be required to pay over to the State, at the time and in the manner herein provided for a retailer, the tax due on the item taxable under this Article.

(e) "Radios" shall mean the apparatus or devices commonly known as radios and radio receiving sets and shall include any instrument, apparatus or mechanical contrivance constructed, assembled or designed to receive oral, musical and similar sound broadcasts transmitted by radio broadcasting stations and shall include all sub-assemblies, devices, or instruments designed to be used in conjunction with other devices which when combined will constitute a device defined as a radio under this Article.

(f) "Television Sets" shall mean the apparatus or devices commonly known and sold as television sets or TV sets, and shall include any instrument, apparatus or mechanical contrivance constructed, assembled or designed to receive television broadcasts transmitted or projected to such sets by television broadcasting stations or systems. Television sets shall also mean and include all sub-assemblies, devices, or instruments for the reproduction of sound and/or visual information from tuning de-

vices or electronic tape recordings; devices designed for the amplification of sound and/or visual information received or reproduced by such devices; one or more units designed to be used in conjunction with other devices which when combined will constitute a device defined as a television set under this Article.

(g) "Phonographs" shall mean the apparatus or devices, either mechanical or electrical, commonly known and sold as phonographs, including record players, high-fidelity phonographs and stereophonic phonographs, and shall also include all sub-assemblies, devices or instruments designed for the reproduction of sound from tuning devices, recordings of tape, records or wire; devices designed for the amplification of sound received or reproduced by such devices; or one or more devices designed to be used in conjunction with other devices which when combined will constitute a device defined as a phonograph under this Article.

(h) "Component part" shall mean any mechanical or electronic apparatus, equipment, device or electronic part or combination thereof, and shall also include any metal, wood, or plastic housing or cabinet built or manufactured to contain a radio, television, or phonograph, or any other apparatus, equipment, device, or part as may be used in the assembly, installation, maintenance of radios, television sets or phonographs as defined under this Article.

(i) "Retail Sale" shall mean any transfer, exchange or barter of any item taxable under this Article, conditional or otherwise, in any manner or by any means whatsoever, to the user and shall include conditional sales, installment lease sales, and any other transfer of an item taxable under this Article in which the title is retained as security for payment of the purchase price and is intended to be transferred later. It shall also mean the first sale or distribution in this State to the user of any item taxable under this Article which has been imported or brought into the State, or which has been manufactured, constructed, produced, or assembled in Texas, or acquired in any manner without the tax having been previously paid thereon in Texas.

(j) "Distribution" shall mean and include any transaction other than a retail sale in which ownership or title

to any item taxable under this Article is passed to a user.

(k) "Use" shall mean the keeping or retention in this State of any item taxable under this Article by the user, or the exercise of any right or power over any such item incident to the ownership thereof. The term "use" shall not include the storing, keeping, or retention of items taxable under this Article in any place of business where such items are sold, or offered for sale, or demonstrated for sale in the regular course of business conducted at such places, nor shall the said term include items taxable under this Article which are crated and stored in Texas for sale and delivery outside the State of Texas.

(l) "Retail Sale Price" shall mean the actual price, valued in money, paid or required to be paid, as a consideration in the purchase or acquisition of any item taxable under this Article by the user, and without any deductions being made therefrom on account of cost of materials, labor, transportation charges, or any expenses whatsoever, including allowance for any trade-ins.

(m) "User" shall mean and include every person who purchases, uses or acquires in any other manner any item taxable under this Article for his own use in Texas and who does not purchase or acquire same for the purpose of resale.

(n) "State, This State" shall mean the State of Texas.

(o) "In This State, Within This State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

Sec. 2. Radio, Television Set, Phonograph, Component Part, Excise Tax Imposed.

There is hereby levied and shall be imposed upon the sale, distribution, or use in this State of radios, television sets, phonographs and component parts an excise tax equivalent to three per cent (3%) of the retail price for which such radios, television sets, phonographs and component parts are sold.

From and after the effective date of this Article every person who imports or in any other manner acquires for use in Texas a radio, television set, phonograph or component part upon which said tax has not been

therefore paid to the State of Texas shall, for the purposes of this Article, be constituted as a retailer and shall report and pay said tax, equal to three per cent (3%) of the retail sale price thereof, to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed herein shall not apply to (1) radios or component parts used or acquired for use by police officers or other law enforcement agencies to receive short-wave broadcasts, (2) radios, television sets, phonographs, and component parts as defined in this Article used by holders of a valid license or permit that is issued by the "Federal Communications Commission" in the operation of the equipment for transmission and reception as contemplated under the terms of said license or permit, and (3) radios installed in new motor vehicles upon which a tax imposed by Chapter 184, Article VI, Acts of the Forty-seventh Legislature, Regular Session, as amended, compiled as Article 7047k, Vernon's Annotated Civil Statutes of Texas, has been paid or is required to be paid.

Sec. 3. Method of Imposition, Fiduciary Relationship Established, Legislative Intent, Taxes to be in Lieu of Any Other Excise Taxes on Items Taxed under This Article.

(a) Every retailer who makes a sale or distribution of an item taxable under this Article in Texas to the user shall add the amount of said tax to the selling price of such item which said tax shall be collected from the purchaser or recipient of such item at the time of such sale or distribution, and said tax shall be reported and paid to the State of Texas as hereinafter provided.

(b) It is the intent of this Article that the tax imposed herein shall constitute an excise tax imposed on the persons using items taxable under this Article and the granting of a permit to retailers to collect such taxes for and in behalf of the State of Texas, shall be deemed to establish a fiduciary relationship.

(c) In the event any tax imposed upon the sale, distribution, or use of any item taxable under this Article is in conflict with the Constitution or laws of the United States or the Constitution of Texas, then it is hereby declared to be the intention of this Article to impose such tax on the

first subsequent sale, distribution, or use of such item which may be subject to being taxed.

(d) The excise tax imposed under this Article shall be in lieu of any other excise tax imposed by the State of Texas or any political subdivision or instrumentality thereof, upon the items taxable under this Article.

Sec. 4. Promulgation of Rules and Regulations by Comptroller.

The Comptroller is hereby vested with power and authority to promulgate rules and regulations, not inconsistent with this Article, for the enforcement of the provisions of this Article and the collection of the revenues levied hereunder.

Sec. 5. Payment of Tax, Reports Required.

(a) Every retailer who shall be required to collect any of the taxes imposed by this Article upon the sale or distribution of any of the items taxable under this Article in this State, or who shall be required to pay the tax levied herein upon any item taxable under this Article used by said retailer, shall on or before the tenth day of each month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, ninety-nine per cent (99%) of the amount of tax or taxes required to be collected during the calendar month immediately preceding, and one hundred per cent (100%) of the amount of tax or taxes required to be paid for items taxable under this Article which are used by said retailer during said period. Provided, however, that this discount shall be allowed only when a retailer files the report and pays the amount of tax due within the time specified for such report and payment, and provided further, that the maximum amount of money allowed to be retained by any retailer under this discount provision shall not exceed One Thousand Dollars (\$1,000) in any one month. At the time of payment of the tax or taxes due, each retailer shall also make and deliver to the Comptroller at his office in Austin, Travis County, Texas, a report properly sworn to and executed by such retailer, or his representative in charge, which shall show the date such report was executed, the name and address of said retailer and the month which the report covers, and shall show separately

by units and value in money the items taxable under this Article on hand at the beginning and end of the month and complete information on all taxable items handled during the month including: value of taxable items received in interstate commerce, value of items purchased or received in intrastate commerce, reflecting separately the number of taxable items and value thereof received with the tax paid and the number of taxable items and value thereof received without the tax having been paid; the number of taxable items and value thereof manufactured or assembled in Texas; the number of taxable items and value thereof sold in interstate commerce; the number of taxable items and value thereof returned to the manufacturer; the number of taxable units and value thereof lost by fire or other accident; the number of taxable items and value thereof used for taxable purposes by the retailer and his representatives, and shall include gross value of all retail sales of all items taxable under this Article. Provided that where a retailer has not sold, distributed, or used any taxable items during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any retailer to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every retailer, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in amount of tax for the period covered by the report.

(b) If any retailer shall fail to remit proper taxes collected upon the sale or distribution of any item taxable under this Article, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the retailer shall pay as additional penalty any reasonable expenses incurred by the Comptroller in such audit.

Sec. 6. Penalties for Failure to Pay or Misappropriation of Taxes Imposed.

(a) All taxes collected hereunder by any retailer, or by any director, officer, agent, employee, trustee, receiver of such retailer, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Article.

(b) If any such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or any person shall willfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Article, on or before the date such payment is due as provided by this Article, such retailer or such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and shall be punished by confinement in the state penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month or more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.

(c) If any director, officer, agent, employee, trustee, receiver of any retailer, or any person shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Article by such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver or such retailer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Article, such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the state penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month, nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. Venue of

prosecution under this Section shall be in Travis County, Texas, or in the county in which the offense occurs.

Sec. 7. Permits Required.

(a) From and after the effective date of this Article, all retailers of items taxable under this Article in this State now engaged or who desire to become engaged in the sale, use or distribution of items taxable under this Article, shall file a duly acknowledged application for a retailer's permit, which shall be nonassignable, with the Comptroller, said application to be accompanied by a fee of Five Dollars (\$5). Said applications to be on a form prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. An application shall be filed and a permit obtained for each place of business owned or operated by a retailer. Said form shall set forth the name under which such retailer transacts or intends to transact such business as retailer, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office address. The Comptroller may require in said application such other information as he may desire. No retailer shall make a sale, use, or distribution of any item taxable under this Article until such application has been filed and a permit has been obtained.

(b) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every retailer a nonassignable, consecutively numbered permit authorizing the sale, use, or distribution of items taxable under this Article in this State from the date of the issuance of said permit, until and including the following August 31st. On or before September 1st of each year, and before any retailer shall make a sale, use, or distribution of items taxable under this Article or engage in selling items taxable under this Article in this State after August 31st, an application shall be filed and a permit obtained for the fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Article, or any rule or regulation adopted by the Comp-

troller. If such permit is cancelled or suspended, said retailer shall not sell, use or distribute items upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this Article.

Sec. 8. Bond Required.

(a) Before any permit shall be issued and before engaging in the sale, use or distribution of any item upon which a tax is required to be paid, in Texas, every retailer shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a retailer to be obtained. The said bond shall be signed by the said retailer and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and in an amount to be prescribed by the Comptroller but in no event shall said bond be less than One Hundred Dollars (\$100). The said bond shall be payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the retailer of all the conditions and requirements imposed upon him by this Article, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller expressly providing for the performance of said obligations, and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, all taxes due upon the use of items taxable under this Article by said retailer, and all costs, penalties, and interest provided in this Article, provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any fiscal year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient

to support the issuance of any new permit, and provided further, that the said renewal certificates, as, if and when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. The amount of any bond required of any retailer shall be fixed by the Comptroller and additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the retailer may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than two (2) times the highest tax said retailer has collected and paid to the State for any month during the preceding six (6) months, but which shall never be less than the minimum aforesaid.

Provided that whenever any person imports for his own use in Texas, any item taxable under this Article and pays the tax to the State of Texas forthwith and before said item is used in Texas, the Comptroller may waive the requirement for furnishing bond and obtaining a permit to use said item in Texas.

(b) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries or executions of any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Should any retailer fail or refuse to supply a new or additional bond within ten (10) days after demand, said retailer's permit shall be cancelled by the Comptroller.

(c) Any surety on any bond furnished by any retailer as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release, or discharge such surety from any liability

already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on the receipt of notice of such request notify the retailer who furnished such bond, and unless such retailer shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Article provided, the Comptroller shall proceed to cancel the permit of said retailer in the manner herein provided. If such new bond shall be furnished by said retailer as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(d) In lieu of giving a bond, any retailer may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until a bond is executed in lieu thereof, or until the Comptroller has made an audit of the retailer's records and authorized the same released. Provided, further, that suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of said retailer, or without making said retailer, as principal obligor in said bond, a party to said suit.

Sec. 9. Amount of Taxes, Penalties, Interest and Costs To Constitute Preferred Lien.

All taxes, penalties, interest and costs due by any retailer under the provisions of this Article and all taxes collected and required to be paid by said retailer to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the personal property of any retailer, devoted to or used in his business as a retailer, which property shall include equipment, inventories on hand of every kind and character whatsoever used or usable in such business, including cash on hand and in bank, accounts and notes receivable, and any and all other personal property of every kind and character whatsoever or wherever situated devoted to such use.

Sec. 10. Retention of Records.

Every retailer shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete record of all purchases and sales of items taxable under this Article, and his records shall show the date of receipt, the name and address of the person from whom purchased, to whom sale was made, the means of delivery, and the quantity in units and value of all such items taxable under this Article. Also it shall show all sales of the same as and when made from stocks on hand, or direct from the manufacturer.

Sec. 11. Investigations by Comptroller Authorized.

For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where any items taxable under this Article are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept and any and all books and records that may be kept incident to the conduct of the business of said retailer, user, distributor or other person, dealing in or possessing any items taxable under this Article. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

Sec. 12. Cancellation of Permits.

(a) The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any retailer's permit as provided under the terms of this Article to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller or any of the provisions of this Article, including any of the following offenses, which may be applicable to such permittee: (1) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax

is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller from any report filed with said Comptroller or from any books or reports required to be kept or any books or records authorized to be audited by the provisions of this Article; (2) failure to file any return or report required under the provisions of this Article; (3) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Article; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (6) refusal to permit the Comptroller, Attorney General, or authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (7) the engaging in any business requiring a permit under the provisions of this Article, without obtaining and possessing a valid permit.

(b) Before any permit may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or applicant therefor not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules and procedure and evidence for such hearings.

(c) If, after said hearing or opportunity to be heard, the permit is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State, except by the provisions

of this Section, shall become due and payable concurrently with the cancellation of such permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports filed by said permittee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes which have been collected and which have accrued from the sale, use or distribution of items taxable under this Article in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit.

(d) An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) all cases shall be tried within thirty (30) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the court pending a trial on the merits.

Sec. 13. Certification of Records and Documents.

(a) If any retailer fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Article, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such retailer or his representative, or a certified copy thereof certified to by the Comptroller or Chief Clerk, showing the amount of sales of items taxable under this Article by such retailer or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State or any

audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said retailer, when signed and sworn to by such representative as being made from said books and records of said retailer or from any books or records of any person from whom such retailer has bought, received, delivered or sold items taxable under this Article, or from the books and records of any transportation agency, who has transported any of said items, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said report or audit may be overcome, upon trial, by evidence adduced by said retailer.

(b) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond or other instrument, referred to in this Article, and that the same had been adopted, promulgated and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts and such certificates shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption or publication, and without further proof of its contents and the same provision shall apply to any bond or other instrument referred to herein.

Sec. 14. Penalties.

(a) If any person affected by this Article (1) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Article, or (2) shall fail to keep for the period of time provided herein any books or records required to be kept, or (3) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (4) shall refuse to permit the Comptroller, the Attorney General, or their authorized representative to inspect and examine any books or records, incident to the conduct of his business that may be kept, or (5) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or (6)

shall refuse to permit the Comptroller, or his authorized representatives, to inspect any premises where items taxable under this Article are produced, made, assembled, stored, transported, sold, or offered for sale or exchange, or (7) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed or (8) shall fail or refuse to comply with any provision of this Article or shall violate the same, or (9) shall fail to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any retailer does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said retailer, within the time herein prescribed, said retailer shall forfeit to the State ten per cent (10%) of the amount due. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

(b) The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Article, shall be in a court of competent jurisdiction, in Travis County, Texas, or in any other court having venue under existing venue Statutes.

Sec. 15. Allocation of Revenues.

All the revenues derived from the taxes and fees imposed by this Article shall be placed in the General Revenue Fund of this State.

Sec. 16. Additional Penalties.

(a) Whoever shall make a retail sale, distribution, or use of any item taxable under this Article upon which a tax is required to be paid without then and there holding a valid retailer's permit issued by the Comp-

troller, or (b) whoever as a retailer shall fail or refuse to make and deliver to the Comptroller a report containing the information required to be made and delivered to said Comptroller, or, (c) whoever shall knowingly make and deliver to said Comptroller any false or incomplete report required to be made and delivered to the Comptroller by a retailer, or (d) whoever as a retailer shall fail or refuse to keep in Texas for the period of time required any books and records required to be kept by a retailer, or (e) whoever shall knowingly make any false entry or shall willfully fail to make entry in any books and records required to be kept by a retailer, shall be guilty of a misdemeanor and upon conviction, shall be punished by confinement in the county jail for not less than one (1) month nor more than one (1) year or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000) or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a misdemeanor conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a retailer of any item taxable under this Article for a period of six (6) months from the date of such conviction.

Any person who shall violate, fail or refuse to comply with any provision of this Article for which no penalty is provided elsewhere herein, or shall violate, or fail or refuse to comply with any rule or regulation duly promulgated by the Comptroller, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

ARTICLE XIII

PRECIOUS OR SEMI-PRECIOUS STONES; ALL ARTICLES MADE OF FUR ON THE HIDE OR PELT; ARTICLES MADE OF PRECIOUS METALS

Section 1. Definitions.

As used in this Article the following words shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Person" shall mean and include any individual, firm, copartnership, joint venture, association, social club,

fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, any agency, institution or instrumentality of the United States, this State, any agency, institution, political subdivision or instrumentality of this State, or any other group or combination acting as a unit.

(b) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Retailer" shall mean and include every person in this State who manufactures, produces, or in any other manner acquires or possesses any of the items taxable under this Article for the purpose of making a resale, distribution, or use of the same in this State to the user; and it shall also include every person in this State who ships, transports or imports into this State any item taxable under this Article and makes the first distribution of, use by, or sale to the user of same in this State.

(d) "Distributor" shall mean and include every person other than a retailer who engages in the business of distributing or selling any item taxable under this Article within this State. If any distributor shall sell, use or distribute any item taxable under this Article to any person not holding a valid permit as required by this Article, said distributor shall qualify as a retailer and be liable for and shall be required to pay over to the State, at the time and in the manner herein provided for a retailer, the tax due on the item taxable under this Article.

(e) "Retail Sale" shall mean any transfer, exchange or barter of any item taxable under this Article, conditional or otherwise, in any manner or by any means whatsoever, to the user and shall include conditional sales, installment lease sales, and any other transfer of an item taxable under this Article in which the title is retained as security for payment of the purchase price and is intended to be transferred later. It shall also mean the first sale or distribution in this State to the user of any item taxable under this Article which has been imported or brought into the State, or which has been manufactured, constructed, produced, or assembled in Texas, or acquired in any manner without the tax having been

previously paid thereon in Texas.

(f) "Distribution" shall mean and include any transaction other than a retail sale in which ownership or title to any item taxable under this Article is passed to a user.

(g) "Use" shall mean the keeping or retention in this State of any item taxable under this Article by the user, or the exercise of any right or power over any such item incident to the ownership thereof. The term "use" shall not include the storing, keeping, or retention of items taxable under this Article in any place of business where such items are sold, or offered for sale, or demonstrated for sale in the regular course of business conducted at such places, nor shall the said term include items taxable under this Article which are crated and stored in Texas for sale and delivery outside the State of Texas.

(h) "Retail Sale Price" shall mean the actual price, valued in money, paid or required to be paid, as a consideration in the purchase or acquisition of any item taxable under this Article by the user, and without any deductions being made therefrom on account of cost of materials, labor, transportation charges, or any expenses whatsoever, including allowance for any trade-ins.

(i) "User" shall mean and include every person who purchases, uses or acquires in any other manner any item taxable under this Article for his own use in Texas and who does not purchase or acquire same for the purpose of resale.

(j) "State, This State" shall mean the State of Texas.

(k) "In This State, Within This State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

Sec. 2. Precious or Semi-Precious Stones; All articles made of fur on the hide or pelt; Articles made of precious metals.

There is hereby levied and shall be imposed upon the sale, distribution or use in this State on all articles commonly or commercially known as "precious or semi-precious stones"; all articles made of fur on the hide or pelt; articles made of precious metals; having a value of in excess of Twenty-five Dollars (\$25), an excise

tax equivalent to three per cent (3%) of the retail price for which any such items are sold.

From and after the effective date of this Article every person who imports or in any other manner acquires for use in this State any item taxable under this Article upon which said tax has not theretofore been paid to the State of Texas shall for the purposes of this Article be considered as a retailer and shall report and pay said tax equal to three per cent (3%) of the retail price thereof to the State of Texas at the time and in the manner hereinafter provided.

Sec. 3. Method of Imposition, Fiduciary Relationship Established, Legislative Intent, Taxes to be in Lieu of Any Other Excise Taxes on Items Taxed under This Article.

(a) Every retailer who makes a sale or distribution of an item taxable under this Article in Texas to the user shall add the amount of said tax to the selling price of such item which said tax shall be collected from the purchaser or recipient of such item at the time of such sale or distribution, and said tax shall be reported and paid to the State of Texas as hereinafter provided.

(b) It is the intent of this Article that the tax imposed herein shall constitute an excise tax imposed on the persons using items taxable under this Article and the granting of a permit to retailers to collect such taxes for and in behalf of the State of Texas, shall be deemed to establish a fiduciary relationship.

(c) In the event any tax imposed upon the sale, distribution, or use of any item taxable under this Article is in conflict with the Constitution or Laws of the United States or the Constitution of Texas, then it is hereby declared to be the intention of this Article to impose such tax on the first subsequent sale, distribution, or use of such item which may be subject to being taxed.

(d) The excise tax imposed under this Article shall be in lieu of any other excise tax imposed by the State of Texas or any political subdivision or instrumentality thereof, upon the items taxable under this Article.

Sec. 4. Promulgation of Rules and Regulations by Comptroller.

The Comptroller is hereby vested with power and authority to promulgate rules and regulations, not in-

consistent with this Article, for the enforcement of the provisions of this Article and the collection of the revenues levied hereunder.

Sec. 5. Payment of Tax, Reports Required.

(a) Every retailer who shall be required to collect any of the taxes imposed by this Article upon the sale or distribution of any of the items taxable under this Article in this State, or who shall be required to pay the tax levied herein upon any item taxable under this Article used by said retailer, shall on or before the tenth day of each month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, ninety-nine per cent (99%) of the amount of tax or taxes required to be collected during the calendar month immediately preceding, and one hundred per cent (100%) of the amount of tax or taxes required to be paid for items taxable under this Article which are used by said retailer during said period. Provided, however, that this discount shall be allowed only when a retailer files the report and pays the amount of tax due within the time specified for such report and payment, and provided further, that the maximum amount of money allowed to be retained by any retailer under this discount provision shall not exceed One Thousand Dollars (\$1,000) in any one (1) month. At the time of payment of the tax or taxes due, each retailer shall also make and deliver to the Comptroller at his office in Austin, Travis County, Texas, a report properly sworn to and executed by such retailer, or his representative in charge, which shall show the date such report was executed, the name and address of said retailer and the month which the report covers, and shall show separately by units and value in money the items taxable under this Article on hand at the beginning and end of the month and complete information on all taxable items handled during the month including: value of taxable items received in interstate commerce, value of items purchased or received in intrastate commerce, reflecting separately the number of taxable items and value thereof received with the tax paid and the number of taxable items and value thereof received without the tax having been paid; the number of taxable items and value

thereof manufactured or assembled in Texas; the number of taxable items and value thereof sold in interstate commerce; the number of taxable items and value thereof returned to the manufacturer; the number of taxable units and value thereof lost by fire or other accident; the number of taxable items and value thereof used for taxable purposes by the retailer and his representatives, and shall include gross value of all retail sales of all items taxable under this Article. Provided that where a retailer has not sold, distributed, or used any taxable items during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any retailer to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every retailer, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in amount of tax for the period covered by the report.

(b) If any retailer shall fail to remit proper taxes collected upon the sale or distribution of any item taxable under this Article, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the retailer shall pay as additional penalty any reasonable expenses incurred by the Comptroller in such audit.

Sec. 6. Penalties for Failure to Pay or Misappropriation of Taxes Imposed.

(a) All taxes collected hereunder by any retailer, or by any director, officer, agent, employee, trustee, receiver of such retailer, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Article.

(b) If any such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or any person shall willfully fail or refuse to pay to the State of Texas any

such tax funds collected under the provisions of this Article, on or before the date such payment is due as provided by this Article, such retailer or such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and shall be punished by confinement in the State Penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.

(c) If any director, officer, agent, employee, trustee, receiver of any retailer, or any person shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Article by such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such retailer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Article, such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State Penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month, nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. Venue of prosecution under this Section shall be in Travis County, Texas, or in the county in which the offense occurs.

Sec. 7. Permits Required.

(a) From and after the effective date of this Article, all retailers of items taxable under this Article in this State now engaged or who desire to become engaged in the sale, use or distribution of items taxable under this Article, shall file a duly acknowledged application for a retailer's permit, which shall be nonassignable, with the Comptroller, said application to be accompanied by a fee of Five Dollars (\$5). Said applications

to be on a form prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. An application shall be filed and a permit obtained for each place of business owned or operated by a retailer. Said form shall set forth the name under which such retailer transacts or intends to transact such business as retailer, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office address. The Comptroller may require in said application such other information as he may desire. No retailer shall make a sale, use, or distribution of any item taxable under this Article until such application has been filed and a permit has been obtained.

(b) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every retailer a nonassignable, consecutively numbered permit authorizing the sale, use, or distribution of items taxable under this Article in this State from the date of the issuance of said permit, until and including the following August 31st. On or before September 1st of each year, and before any retailer shall make a sale, use, or distribution of items taxable under this Article or engage in selling items taxable under this Article in this State after August 31st, an application shall be filed and a permit obtained for the fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Article, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said retailer shall not sell, use or distribute items upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this Article.

Sec. 8. Bond Required.

(a) Before any permit shall be issued and before engaging in the sale, use or distribution of any item upon which a tax is required to be paid, in Texas, every retailer shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a retailer to be obtained. The said bond shall be signed by the said retailer and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and in an amount to be prescribed by the Comptroller but in no event shall said bond be less than One Hundred Dollars (\$100). The said bond shall be payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the retailer of all the conditions and requirements imposed upon him by this Article, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller expressly providing for the performance of said obligations, and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, all taxes due upon the use of items taxable under this Article by said retailer, and all costs, penalties, and interest provided in this Article, provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any fiscal year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit, and provided further, that the said renewal certificate, as, if and when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. The amount of any bond required of any retailer shall be fixed by the Comptroller and additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the retailer may demand a reduction of his bond

after six (6) months from the effective date thereof to a sum to be not more than two (2) times the highest tax said retailer has collected and paid to the State for any month during the preceding six (6) months, but which shall never be less than the minimum aforesaid.

Provided that whenever any person imports for his own use in Texas, any item taxable under this Article and pays the tax to the State of Texas forthwith and before said item is used in Texas, the Comptroller may waive the requirement for furnishing bond and obtaining a permit to use said item in Texas.

(b) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution of any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Should any retailer fail or refuse to supply a new or additional bond within ten (10) days after demand, said retailer's permit shall be cancelled by the Comptroller.

(c) Any surety on any bond furnished by any retailer as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on the receipt of notice of such request notify the retailer who furnished such bond, and unless such retailer shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Article provided, the Comptroller shall proceed to cancel the permit of said retailer

in the manner herein provided. If such new bond shall be furnished by said retailer as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(d) In lieu of giving a bond, any retailer may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until a bond is executed in lieu thereof, or until the Comptroller has made an audit of the retailer's records and authorized the same released. Provided further, that suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of said retailer, or without making said retailer, as principal obligor in said bond, a party to said suit.

Sec. 8A. The permit and bond required under Section 7 and 8 of this Article shall not be required from any retailer, as that term is defined herein, who pays a store tax to this State, and who indicates to the Comptroller at the time of the payment of his store tax that he sells items taxed under this Article.

Sec. 9. Amount of Taxes, Penalties, Interest and Costs to Constitute Preferred Lien.

All taxes, penalties, interest and costs due by any retailer under the provisions of this Article and all taxes collected and required to be paid by said retailer to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the personal property of any retailer, devoted to or used in his business as a retailer, which property shall include equipment, inventories on hand of every kind and character whatsoever used or usable in such business, including cash on hand and in bank, accounts and notes receivable, and any and all other personal property of every kind and character whatsoever or wherever situated devoted to such use.

Sec. 10. Retention of Records.

Every retailer shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a

complete record of all purchases and sales of items taxable under this Article, and his records shall show the date of receipt, the name and address of the person from whom purchased, to whom sale was made, the means of delivery, and the quantity in units and value of all such items taxable under this Article. Also it shall show all sales of the same as and when made from stocks on hand, or direct from the manufacturer.

Sec. 11. Investigations by Comptroller Authorized.

For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where any items taxable under this Article are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept and any and all books and records that may be kept incident to the conduct of the business of said retailer, user, distributor or other person, dealing in or possessing any items taxable under this Article. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

Sec. 12. Cancellation of Permits.

(a) The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any retailer's permit as provided under the terms of this Article to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller or any of the provisions of this Article, including any of the following offenses, which may be applicable to such permittee: (1) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller from any report filed with said Comptroller or from any books or reports re-

quired to be kept or any books or records authorized to be audited by the provisions of this Article; (2) failure to file any return or report required under the provisions of this Article; (3) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Article; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (6) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (7) the engaging in any business requiring a permit under the provisions of this Article, without obtaining and possessing a valid permit.

(b) Before any permit may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or applicant therefor not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules and procedure and evidence for such hearings.

(c) If, after said hearing or opportunity to be heard, the permit is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State, except by the provisions of this Section, shall become due and payable concurrently with the cancellation of such permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports filed by said permittee, and ending with the date of cancella-

tion and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued from the sale, use or distribution of items taxable under this Article in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit.

(d) An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) all cases shall be tried within thirty (30) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the court pending a trial on the merits.

Sec. 13. Certification of Records and Documents.

(a) If any retailer fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Article, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such retailer or his representative, or a certified copy thereof certified to by the Comptroller or Chief Clerk, showing the amount of sales of items taxable under this Article by such retailer or his representatives, on which such tax, penalties, or interest have not been remitted or paid to the State or any audit made by the Comptroller or his representative, from any books or other records required to be kept or that may be kept by said retailer, when signed and sworn to by such representative as being made from said

books and records of said retailer or from any books or records of any person from whom such retailer has bought, received, delivered, or sold items taxable under this Article, or from the books and records of any transportation agency, who has transported any of said items, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said report or audit may be overcome, upon trial, by evidence adduced by said retailer.

(b) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond or other instrument, referred to in this Article, and that the same had been adopted, promulgated and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts and such certificates shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption or publication, and without further proof of its contents and the same provision shall apply to any bond or other instrument referred to herein.

Sec. 14. Penalties.

(a) If any person affected by this Article (1) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Article, or (2) shall fail to keep for the period of time provided herein any books or records required to be kept, or (3) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (4) shall refuse to permit the Comptroller, the Attorney General, or their authorized representative to inspect and examine any books or records, incident to the conduct of his business that may be kept, or (5) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or (6) shall refuse to permit the Comptroller, or his authorized representatives, to inspect any premises where items taxable under this Article are produced, made, assembled, stored, transported, sold, or offered for sale

or exchange, or (7) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed, or (8) shall fail or refuse to comply with any provision of this Article or shall violate the same, or (9) shall fail to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any retailer does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said retailer, within the time herein prescribed, said retailer shall forfeit to the State ten per cent (10%) of the amount due. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

(b) The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Article, shall be in a court of competent jurisdiction, in Travis County, Texas, or in any other court having venue under existing venue Statutes.

Sec. 15. Allocation of Revenues.

All the revenues derived from the taxes and fees imposed by this Article shall be placed in the General Revenue Fund of this State.

Sec. 16. Additional Penalties.

(a) Whoever shall make a retail sale, distribution, or use of any item taxable under this Article upon which a tax is required to be paid without then and there holding a valid retailer's permit issued by the Comptroller, or (b) whoever as a retailer shall fail or refuse to make and deliver to the Comptroller a report containing the information required to be made and delivered to said Comptroller, or, (c) whoever shall knowingly make and deliver to said Comptroller any false

or incomplete report required to be made and delivered to the Comptroller by a retailer, or (d) whoever as a retailer shall fail or refuse to keep in Texas for the period of time required any books and records required to be kept by a retailer, or (e) whoever shall knowingly make any false entry or shall willfully fail to make entry in any books and records required to be kept by a retailer, shall be guilty of a misdemeanor and upon conviction, shall be punished by confinement in the County Jail for not less than one (1) month nor more than one (1) year or by a fine of not less than One Hundred Dollars (\$100), or more than Five Thousand Dollars (\$5,000) or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a misdemeanor conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a retailer of any item taxable under this Article for a period of six (6) months from the date of such conviction.

Any person who shall violate, fail or refuse to comply with any provision of this Article for which no penalty is provided elsewhere herein, or shall violate, or fail or refuse to comply with any rule or regulation duly promulgated by the Comptroller, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

ARTICLE XIV

SULPHUR PRODUCERS TAX

Section 1. Section 1 of Article III, Chapter 184, Acts of the Forty-seventh Legislature, 1941, as amended, which is compiled as Section 1 of Subdivision 40b of Article 7047, Vernon's Annotated Civil Statutes of Texas, is hereby amended so as to hereafter read as follows:

"Section 1. Sulphur Producers.

"(a) Each person, firm, association, or corporation who owns, controls, manages, leases, or operates any sulphur mine, or mines, well, or shafts, or who produces sulphur by any method, system, or manner within this State shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller in this State, or if such

person be other than individual, sworn to by its president, secretary, or other duly authorized officer on such forms as the Comptroller shall prescribe, showing the total amount of sulphur produced within this State by said person during the quarter next preceding, and at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter ending on said date an amount equal to One Dollar and Three Cents (\$1.03) per long ton, or fraction thereof, of all sulphur produced by said person within the State of Texas during said quarter.

"(b) Each person subject to the payment of this tax shall cause to be made, kept, and preserved a full and complete record of all sulphur produced in this State by it, all of which record shall be open at all times to official inspection and examination by the Comptroller or the Attorney General, or any employee of or representative of the Comptroller or the Attorney General. Said records may be destroyed after three (3) years from the last entry appearing in any such record. Any person failing to keep such record, or records, as herein required, shall forfeit to the State of Texas as a penalty any sum no less than Five Hundred Dollars (\$500) nor more than Five Thousand Dollars (\$5,000), payable to the State of Texas, and each ten (10) days of failure to keep such records shall constitute a separate offense and subject the offender to additional penalties for each such period of failure to keep such records.

"(c) Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this Article within thirty (30) days after same is due and payable shall pay to the State as a penalty an additional amount equal to ten per cent (10%) of the taxes due, and such tax and penalty shall draw interest at the rate of six per cent (6%) per annum from the due date until paid. The Attorney General or any district or county attorney at the direction of the Attorney General shall bring suit in behalf of the State to recover the amount of taxes, penalties, and interest past due and payable by any person affected by this law. The word 'person' as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, or other concern by what-

ever name or howsoever organized, formed, or created.

"(d) The Comptroller may require such other information and such additional reports as he may deem advisable."

ARTICLE XV

ENTERTAINMENT ADMISSIONS AND THEATER OCCUPATION TAX

Section 1. Subsection 3, Section 6, Article III, Chapter 495, Acts of the Forty-fourth Legislature, Third Called Session, 1936, as last amended by Chapter 34, Acts of the Fifty-fifth Legislature, 1957, which is compiled as Article 7047a-19, Paragraph (3), Vernon's Annotated Civil Statutes of Texas, is amended to hereafter read as follows:

"(3) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays and like amusements held at a fixed or regularly established motion picture theater, where the admission charged is in excess of One Dollar and Five Cents (\$1.05) and not more than One Dollar and Fifteen Cents (\$1.15) a tax of one cent (1c); and where the admission charged is in excess of One Dollar and Fifteen Cents (\$1.15) a tax of two cents (2c) plus one cent (1c) on each ten cents (10c) or fractional part thereof in excess of One Dollar and Twenty-five Cents (\$1.25)."

Sec. 2. Chapter 35, Acts of the Forty-first Legislature, Fifth Called Session, 1930, which is compiled as Section 22a of Article 7047, Vernon's Annotated Civil Statutes of Texas, is hereby in all things expressly repealed.

ARTICLE XVI

ALLOCATION

Section 1. (a) All revenue, other than that part allocated for enforcement purposes, derived from the tax levied by Article III of this Act shall be allocated to the General Revenue Fund of the State.

(b) All revenue, other than that part allocated for enforcement purposes, derived from the tax levied by Article VIII of this Act shall be allocated one-fourth (1/4) to the Available School Fund and three-fourth (3/4) to the Omnibus Tax Clearance Fund.

(c) All revenue, other than those portions allocated for enforcement

purposes, derived from the taxes levied by other Articles of this Act shall be allocated as provided specifically in those Articles.

ARTICLE XVII

MISCELLANEOUS

Section 1. Savings Clause.

All sales, occupation, excise, license fees or other taxes, penalties and interest accruing to the State of Texas prior to the effective date of this Act shall not be affected by the passage of this Act but shall be and remain valid and binding obligations to the State of Texas, and all taxes, fines, penalties and interest accruing under the provisions of prior or existing occupation, excise, or other tax laws are hereby expressly preserved and declared to be legal and valid obligations to the State of Texas. Neither shall the expiration of prior laws affect offenses committed or prosecutions begun under the terms of prior laws, and prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

Sec. 2. Severability.

If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

Sec. 3. Appropriation.

Whenever any allocation is made by this Act for administration to the collection agency of the State collecting such tax such allocation shall be subject to appropriation by the Legislature; and appropriation by the Legislature of such funds or any part thereof shall be in lieu of the percentages allocated by this Act.

Sec. 4. Repealer.

(a) Chapter 522, Acts of the Fifty-fourth Legislature, Regular Session, 1955, is hereby expressly repealed. Any and all provisions of law which now impose a luxury excise tax upon the gross receipts from the sale of radios and television sets in this State are hereby repealed to the extent such laws are applicable to radios and television sets.

(b) Subsections (b), (c), (d) and (h) of Section 1 and Section 14 of

Article XVII, Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941, as amended, compiled respectively as Subsections (b), (c), (d) and (h) of Article 7065b-1 and as Article 7065b-14 of Vernon's Annotated Civil Statutes of Texas, are hereby repealed.

(c) All other laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only.

Sec. 5. Emergency.

The pressing necessity to realize additional revenue for the State creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and that this Act shall take effect and be in force from and after September 1, 1959.

On motion of Senator Fuller and by unanimous consent the amendment was not read but was explained, it being H. B. No. 11 as passed by the House and sent to the Senate on July 24, 1959.

Senator Fuller offered the following amendment to the pending amendment:

Amend Article II, Section 2-2 $\frac{1}{2}$ -(a), paragraph (1), by changing the words and figures One Dollar and Fifty Cents (\$1.50) wherever they appear to Two Dollars (\$2.00) and by deleting the first paragraph of subsection 2.

The amendment to the amendment was read and was adopted.

On motion of Senator Lane the amendment by Senator Fuller, as amended, was tabled.

Record of Vote

Senator Fuller asked to be recorded as voting "Nay" on the motion to table the above amendment as amended.

Senator Parkhouse offered the following amendment to the bill:

Amend Senate Committee Substitute for House Bill No. 11, Chapter 10, by striking out of Article 10.03 subparagraph (2) and inserting in lieu thereof the following:

"(2) Provided, however, that when special fuels are used or consumed, or

are to be used or consumed by a transit company (1) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers; (2) which holds a franchise from such city or town; (3) whose rates are regulated by such city or town; and (4) which pays such city or town a tax on its gross receipts, such transit company which possesses the aforementioned four (4) characteristics, or any municipally owned and operated transit company, shall be entitled to a refund of the taxes levied herein except that the one-fourth ($\frac{1}{4}$) of the taxes levied which is allocated to the Available School Fund by the Constitution of the State of Texas shall not be refunded."

"A transit company may obtain such refunds by conforming to the refund procedure set forth in Article 10.14 of this Act and by furnishing to the Comptroller an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it has used, or will use, such motor fuel only in the operations of its transit vehicles."

The amendment was read.

Senator Owen offered the following amendment to the pending amendment.

Amend Parkhouse amendment to C. S. for H. B. No. 11 by deleting that portion of item No. 4 to the comma, therefrom and substitute in lieu thereof the following:

"(4) which pays such city or town a tax not exceeding one-half of one percentum per annum on its gross receipts,"

The amendment to the amendment was read.

Senator Willis raised the point of order that the amendment by Senator Owen to the pending amendment by Senator Parkhouse was not germane to the pending amendment.

The President overruled the point of order.

On motion of Senator Hardeman the amendment by Senator Owen to the pending amendment by Senator Parkhouse was tabled.

Question recurred on the amendment by Senator Parkhouse.

Senator Lane moved to table the amendment by Senator Parkhouse.

Yeas and nays were demanded.

The motion to table prevailed by the following vote:

Yeas—22

Aikin	Lane
Bradshaw	Martin
Colson	Moffett
Crump	Moore
Dies	Owen
Fly	Ratliff
Hardeman	Roberts
Herring	Rogers
Hudson	Secrest
Kazen	Smith
Krueger	Weinert

Nays—9

Baker	Phillips
Fuller	Reagan
Gonzalez	Willis
Hazlewood	Wood
Parkhouse	

Senator Rogers offered the following amendment to the bill:

Amend Chapter 20 of Section 1 of the Committee Substitute for H. B. No. 11 by adding a new Article to be known as Article 20.06½ and to read as follows:

"Art. 20.06½. Precious or semi-precious stones; all articles made of fur on the hide or pelt; articles made of precious metals.

There is hereby levied and shall be imposed upon the sale, distribution or use in this State on all articles commonly or commercially known as "precious or semi-precious stones"; all articles made of fur on the hide or pelt; articles made of precious metals; having a value in excess of Twenty-five Dollars (\$25), an excise tax equivalent to three per cent (3%) of the retail price for which any such items are sold.

From and after the effective date of this Article every person who imports or in any other manner acquires for use in this State any item taxable under this Article upon which said tax has not theretofore been paid to the State of Texas shall for the purposes of this Article be considered as a retailer and shall report and pay said tax equal to three per cent (3%) of the retail price

thereof to the State of Texas at the time and in the manner hereinafter provided.

Provided, however, that a retailer who shall be required to collect any of the tax imposed by this Article upon the sale or distribution of any of the items taxable under this Article in this State, or who shall be required to pay the tax levied herein upon any item taxable under this Article used by said retailer shall not be required to make the report called for in Article 20.09 of this Chapter."

The amendment was read.

(Senator Aikin in the Chair.)

Senator Parkhouse moved to table the amendment.

The motion to table was lost.

Question recurring on the amendment by Senator Rogers, the amendment was adopted.

Record of Votes

Senators Willis, Parkhouse, Baker, Owen, Krueger and Reagan asked to be recorded as voting "nay" on the adoption of the above amendment.

**Vote on Amendment Number 3
Reconsidered**

Senator Martin moved to reconsider the vote by which amendment No. 3 to C. S. H. B. No. 11 by Senator Lane was adopted today.

Senator Phillips moved to table the motion to reconsider.

Question on the motion to table, yeas and nays were demanded.

The motion to table was lost by the following vote:

Yeas—14

Baker	Hazlewood
Bradshaw	Lane
Colson	Phillips
Crump	Reagan
Fly	Smith
Fuller	Weinert
Hardeman	Wood

Nays—17

Aikin	Hudson
Dies	Kazen
Gonzalez	Krueger
Herring	Martin

Moffett	Roberts
Moore	Rogers
Owen	Secrest
Parkhouse	Willis
Ratliff	

Question recurring on the motion to reconsider the vote by which amendment No. 3 was adopted, the motion prevailed.

The Presiding Officer then laid before the Senate amendment No. 3 by Senator Lane which was adopted this morning.

Senator Martin offered a substitute for amendment No. 3.

Senator Moore moved the previous question on the pending amendment and the passage of C. S. H. B. No. 11 to third reading and the motion was duly seconded.

The previous question failed to be ordered by the following vote:

Yeas—11

Dies	Moore
Fuller	Owen
Herring	Parkhouse
Hudson	Ratliff
Krueger	Roberts
Martin	

Nays—20

Aikin	Lane
Baker	Moffett
Bradshaw	Phillips
Colson	Reagan
Crump	Rogers
Fly	Secrest
Gonzalez	Smith
Hardeman	Weinert
Hazlewood	Willis
Kazen	Wood

Senator Phillips offered an amendment to the amendment by Senator Martin.

Senator Martin then withdrew his pending amendment.

Question recurring on the adoption of Amendment No. 3, the amendment was adopted.

Record of Votes

Senators Herring, Krueger, Willis, Ratliff and Martin asked to be recorded as voting "nay" on the adoption of Amendment No. 3.

(President in the Chair.)

Motion to Reconsider the Vote on Amendment Number 5

Senator Crump moved to reconsider the vote by which Amendment No. 5 was adopted this morning.

Senator Moore moved the previous question on the motion to reconsider by Senator Crump and the passage of C. S. H. B. No. 11 to third reading and the motion was duly seconded.

The previous question was ordered by the following vote:

Yeas—21

Baker	Moffett
Bradshaw	Moore
Dies	Parkhouse
Fly	Phillips
Fuller	Ratliff
Hardeman	Reagan
Hazlewood	Roberts
Hudson	Smith
Krueger	Weinert
Lane	Wood
Martin	

Nays—10

Aikin	Kazen
Colson	Owen
Crump	Rogers
Gonzalez	Secrest
Herring	Willis

Question recurring on the motion to reconsider the vote by which Amendment No. 5 was adopted, the motion was lost by the following vote:

Yeas—7

Baker	Owen
Crump	Rogers
Fuller	Wood
Kazen	

Nays—24

Aikin	Martin
Bradshaw	Moffett
Colson	Moore
Dies	Parkhouse
Fly	Phillips
Gonzalez	Ratliff
Hardeman	Reagan
Hazlewood	Roberts
Herring	Secrest
Hudson	Smith
Krueger	Weinert
Lane	Willis

On motion of Senator Lane and by

unanimous consent the caption was amended to conform to the body of the bill as amended.

C. S. H. B. No. 11 was passed to third reading.

Record of Vote

Senator Krueger asked to be recorded as voting "nay" on the passage of C. S. H. B. No. 11 to third reading.

Committee Substitute House Bill 11 on Third Reading

Senator Lane moved that Senate Rule 32 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C. S. H. B. No. 11 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—29

Aikin	Moffett
Baker	Moore
Bradshaw	Owen
Colson	Parkhouse
Crump	Phillips
Dies	Ratliff
Fly	Reagan
Fuller	Roberts
Hardeman	Rogers
Hazlewood	Secrest
Herring	Smith
Hudson	Weinert
Kazen	Willis
Lane	Wood
Martin	

Nays—2

Gonzalez	Krueger
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The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and passed by the following vote:

Yeas—29

Aikin	Hardeman
Baker	Herring
Bradshaw	Hudson
Colson	Kazen
Crump	Lane
Dies	Martin
Fly	Moffett
Fuller	Moore
Gonzalez	Owen

Parkhouse	Secrest
Phillips	Smith
Ratliff	Weinert
Reagan	Willis
Roberts	Wood
Rogers	

Nays—2

Hazlewood	Krueger
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Adjournment

On motion of Senator Hardeman the Senate at 7:00 o'clock p.m. adjourned until 11:00 o'clock a.m. tomorrow.

SIXTH DAY

(Thursday, July 30, 1959)

The Senate met at 11:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following senators were present:

Aikin	Martin
Baker	Moffett
Bradshaw	Moore
Crump	Owen
Dies	Parkhouse
Fly	Phillips
Fuller	Ratliff
Gonzalez	Reagan
Hardeman	Roberts
Hazlewood	Rogers
Herring	Secrest
Hudson	Smith
Kazen	Willis
Krueger	Wood
Lane	

Absent—Excused

Colson	Weinert
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A quorum was announced present.

Reverend W. H. Townsend, Chaplain, offered the invocation as follows:

"Holy Father, as a mother stills her child and Thou didst still the storm at sea, so speak to us that we be still and know that Thou art God. Forgive us our sins, and may we behold how good and how pleasant it is for brethren to dwell together in unity. For Christ's sake. Amen."

On motion of Senator Aikin, and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.